TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 150.

THE RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE CITY OF RICHMOND.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

FILED OCTOBER 4, 1875.

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a To a justice of the Supreme Court of the United States:

The petition of the Richmond, Fredericksburg and Potomac Railroad Company respectfully represents that in a suit in the State of Virginia, wherein they were plaintiffs in error and the City of Richmond was defendant in error, in the highest court of the State in which a decision in the suit could be had, there is drawn in question the validity of a statute of or an authority exercised under the State, on the ground of their being repugnant to the Constitution of the United States, and a title, right, privilege, or immunity is claimed under the Constitution, to wit: Under the tenth section of the first article thereof, providing that no State shall pass any "law impairing the obligation of contracts;" and under the fifth article of the amendments to the Constitution, which provides that no person shall "be deprived of life, liberty, or property without due process of law, nor shall private property be taken for public use without just compensation;" and under the fourteenth amendment thereof, which provides that "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws," as appears by the petition to the highest court of the State, on p. 1 to 8 of the record, and by other parts of said record.

And your petitioners show that, on the first day of April, 1875, there was a final judgment in said suit in the highest court of the State, and the decision is in favor of the validity of said statute of or authority exercised under the State, and is against the title, right, privilege, or immunity so specially set up or claimed by your petitioners under said Constitution.

b Wherefore your petitioners pray for a writ of error, (with a citation duly signed, on good and sufficient security being taken,) in order that said judgment may be re-examined and reversed or affirmed in the Supreme Court of the United States.

April 19, 1875.

THE PETITIONERS ABOVE NAMED,
By CON. ROBINSON, *their Counsel.*

c (Indorsed:) The Richmond, Fredericksburg and Potomac Railroad Company v. The City of Richmond. Petition for a writ of error. Let the writ issue. Ap. 20, 1875. M. R. Waite, Chief-Justice Sup. C't U. S.

d VIRGINIA:

Pleas before the supreme court of appeals of Virginia, held at the State court-house, in the city of Richmond, on Wednesday, the 28 day of April, 1875:

Be it remembered that heretofore, to wit, on the 2d day of September, 1874, came the Richmond, Fredericksburg and Potomac Railroad Company, by its counsel, and filed its petition and record in the clerk's office of the said supreme court of appeals, on which a writ of supersedeas had been awarded by one of the judges of the said court, (by an endorsement which is inserted in this record at the foot of the said petition,) to a judgment rendered by the circuit court of the city of Richmond on the 29th day of June, 1874, in a suit in said circuit court in which the said petitioner was plaintiff and the City of Richmond was defendant, which petition and the endorsement on the same and the record accompanying them are in the words and figures following, to wit:

1 In the supreme court of appeals of Virginia, Richmond.

RICHMOND, FREDERICKSBURG AND POTOMAC Railroad Company
vs.
CITY OF RICHMOND.

To the supreme court of appeals of the State of Virginia, or one of the judges thereof:

The petition of the Richmond, Fredericksburg and Potomac Railroad Company respectfully represents that they are parties to a case wherein, on the 29th day of June, 1874, there was a final judgment by the circuit court of the city of Richmond, for that city, against them in a controversy for a matter not less in value or amount than five hundred dollars, exclusive of costs, and wherein there is drawn in question a franchise and other matter not merely pecuniary. Herewith is presented a transcript of the record, whereby it appears that the case is as follows:

Under an act passed by the general assembly of Virginia on the 25th of February, 1831, (Sess. Acts, p. 128,) your petitioners became incorporated "for the purpose of making a railroad from some point within the corporation of Richmond, to be approved by the common council, to some point within the corporation of Fredericksburg, and for the purpose of extending the same," "and for providing everything necessary and convenient for the purpose of transportation on the same." (§ 1.) By this act the president and directors are "invested with all the rights and powers necessary for the construction, repair, and maintaining of a railroad" (§ 7) "located as aforesaid." Especially are they empowered (§ 24) "to purchase, with the funds of the said company, and place on the railroad constructed by them under this act, all machines,
2 wagons, vehicles, carriages, and teams of any description whatsoever, which they may deem necessary or proper for the purposes of transportation." The machines, wagons, vehicles, and carriages so purchased, and the works constructed, are (by § 25) "exempt from any public charge or tax whatsoever," and by § 36, if any person or persons shall wilfully injure, impair, or destroy any part of the railroad or "any of the necessary works, machines, wagons, vehicles, or carriages belonging to the company," it is made a punishable offence.

It being requisite that the point within the corporation of Richmond, from which the railroad should be made, or at which it should terminate, should be approved by the common council, and it appearing to the board of directors on the 22d of December, 1834, most expedient to conduct the same from what was then called the Richmond turnpike, along H street to a point at or near the intersection of said street and Eighth street, and there to terminate the same by suitable connections with the contemplated warehouses and workshops of the company, on lots Nos. 477 and 478, which had been purchased by the company, the board, by a resolution of that date, (December 22, 1834,) requested the approbation of the common council to this plan, (p. 3:) and the common council, by a resolution of the 23d of the same month, did "approve the proposed location of the said railroad and the present termination of the same, as described in the" resolution of the board, "and authorize the prosecution of the said work within the limits of the city on the above location." Thereupon the company made its railroad from that point within the corporation of Richmond, approved by the common council, and erected an extensive depot at that point.

Before this time, and indeed before the passage of the act of February 25, 1834, the railroad from the Roanoke to Petersburg had been completed and locomotives used upon it for the purpose of transportation, and their use was contemplated, by and under the act of February 25, 1834, which gave as full power to use them as had been given to the Petersburg Railroad Company.

On the 15th of February, 1836, the business of transportation was commenced on the railroad. Shortly before that day, some of the residents on Shockoe Hill expressed the opinion that the railroad company should not be permitted to use locomotive power for propelling their cars within the city; their resolutions as to this and other matters being submitted to the common council and referred to the commissioners of streets with certain instructions. The resolution of the council was laid before the board on the 15th of February, 1836. In reply thereto, the board made a communication stating that under power given by the act of incorporation, they had "purchased and placed on the railroad a locomotive-engine and other machines proper for the purposes of transportation;" that "their plans, so far as the same relates to travel on said road on H street, is to have the cars drawn by a locomotive;" but that "they have adopted a resolution directing their engineers not to suffer the locomotive, while in the city, to proceed at a rate exceeding three miles per hour." Upon receiving this answer, which contained also a reply as to other matters, "the commissioners of streets recommended, and the common council adopted, a resolution instructing the commissioners to enquire into the expediency of causing H street to be paved from the eastern side of Eighth street to the western side of Brook avenue, and to ascertain from the president and directors of the railroad company whether they would incur any, and, if any, what, portion of the expense attending the same." After a communication from the commissioners of streets to a committee of the company, and from the committee to the commissioners, showing the views on each side, the city surveyor was directed "to prepare and submit a plan, the most judicious to be adopted, for paving H street from Brook avenue to the eastern side of Eighth street, having a regard as well to the just rights and interests of the city as to those of the railroad company in the use of said street." Whereupon the city surveyor did "submit, as a compromise of interests," a certain plan: the commissioners of streets unanimously approved it: and the committee of the railroad company, while expressing the opinion that the company was asked to bear a larger portion of the expense than was reasonable, came to the conclusion to yield their assent, and it was given accordingly. The commissioners of streets made a report, stating that, having considered the importance of the work, the advantageous terms upon which it was understood it could be effected, and "the very liberal proposition of the railroad company, they unanimously recommended to the common council to cause the work to be executed agreeably to the plan submitted by the city surveyor, and that the proposition of the railroad company should be accepted." And this report was adopted by the common council on the 20th of March, 1836.

While these proceedings were going on between the common council and the commissioners of streets on the one hand, and the railroad company and its committee on the other, the locomotives were running daily on H street. The commissioners of streets, therefore, acted not only with full knowledge of the ground on which the right of the company to run locomotives rested under its charter, but with full evidence of the actual effects produced by the running. With both this knowledge and

this evidence, it was very distinctly understood in the interviews which took place between the commissioners of streets and the committee of the railroad company, that upon the company's agreeing to pay the part which it was asked to pay of the expense of paving, there would be an end to all action upon the resolutions adopted at the meeting of residents on Shockoe Hill. The part which the company undertook to pay—amounting to nearly seven thousand dollars—was paid; and the street which was formerly remarkable for having the deepest mud in winter and the deepest dust in summer, was now handsomely paved.

Upon a dark night in the winter of 1836–'7, two horses came in contact with the locomotive, and under the peculiar circumstances of
4 the case, the company paid to the owner their value, although, with this single exception, there had not resulted from the use of locomotives in this city, during two years and eight months that they had been running, any injury either to persons or property. Yet in the fall of 1838, on a petition of some of the citizens of Richmond, praying the common council to prohibit the use of locomotive-engines upon the streets of the city, a resolution was reported to the common council by its committee, declaring it expedient and proper to make such prohibition by ordinance. A committee of the railroad company, to whom was referred this petition and resolution, examined into the rights of the company, and made a report, on the 22d of October, 1838, stating their views of its rights, and their conclusion that "the right given it by its charter, the expense which it encountered in building and fitting up its depot, after the hall approved the termination, and the understanding at the time this company agreed to bear so large a share of the expense of paving H street, create rights which cannot lawfully be divested." Upon that occasion it was deemed sufficient to make known the nature of those rights. This report was approved. A copy thereof was transmitted to the common council, and it was published in newspapers of the city.

Now, after a lapse of thirty-four or thirty-three years, there have been proceedings of a remarkable character; not mere resolutions of the council of the city expressive of an opinion against the rights which the railroad company distinctly claimed in 1836, and no less distinctly insisted upon in 1838; not mere resolutions for judicial proceedings to determine the validity or invalidity of the rights so claimed and insisted upon, or to ascertain whether there exists good cause for restraining the farther exercise of those rights; but proceedings in the form of an ordinance or by law passed by one party to this controversy (p. 5 to 7) and enforced by officers compensated by that same party for their official services. There was a summons to appear before a police-justice of the city to show cause why a fine of five hundred dollars should not be imposed on the railroad company for violation of the ordinance, in running a steam-engine on Broad street, east of Belvidere street, in said city, on the 1st
4 day of January, 1874; and the police-justice held the ordinance valid, and pronounced judgment that the company pay a fine of $500. An appeal being allowed, and the case involving the constitutionality or validity of the ordinance or by-law, the appeal was cognizable by the circuit court having jurisdiction over the corporation in which the judgment was rendered. The case was submitted to the circuit court upon the evidence and admissions set forth in a bill of exceptions, commencing on p. 2. The evidence (p. 8 to 36) shows not only that locomotives are used at the present day in the streets of Petersburg, Portsmouth, and Norfolk, in Virginia, as well as in streets of towns and cities out of Virginia, but also shows that in streets of Petersburg and Norfolk they

were used before December, 1834, and shows the surrounding
5 circumstances when the company and the common council were acting in that month, in February and March, 1836, and in the fall of 1838. Pages 37 to 355 are depositions taken in a chancery suit, admitted by the attorney for the city of Richmond (p. 37) to be read in evidence in this case precisely as if they had been regularly taken therein, but excepted to as incompetent and irrelevant. The chancery suit is between Henry Miller and others, plaintiffs, and the railroad company, and the depositions were taken some for the plaintiffs and some for the defendants in that suit, and relate for the most part to questions as to whether and how far there is danger to persons or injury to property from the use of locomotives on the street; and upon such questions there is much diversity in the statements and opinions of witnesses. It is, however, clearly established that there has been a constant increase in business and a large increase in the value of property on Broad street. (See P. W. Grubbs, p. 49; James M. Winston, 135; W. G. Dandridge, 225; J. B. Kidd, 247, 271; J. V. L. McCreery, 249, 269; Wm J. M. Dowell, 323; J. W. Anderson, 331; Ed. H. Chalkley, 339.) There is also material evidence on other points. Conway R. Howard, civil engineer, deposes (p. 251) as to the railroads in the city, the streets on which they run, and for what distances, and the width of those streets, and the fact that steam-engines are "used upon all of the said railroads within the city of Richmond." He also speaks as to "other cities in the United States on which some of the streets are occupied by railroads worked by steam-engines," (p. 254 to 258.) E. T. D. Myers, a civil engineer and superintendent of the R., F. & P. R. R. Co., deposes (p. 342) as to the number of engines and trains run daily upon the railroad on Broad street; and also (p. 347) of the increased cost for transportation of passengers and freight if the use of locomotives on Broad street should cease.

It is admitted by the parties, by their counsel, (p. 349,) that in 1834, when the company's charter was granted, the western limits of the city on Broad street were a few feet west of Monroe street, and that the limits of the city on that street now extend very much further west.

For reasons assigned in the opinion, (p. 357 to 382,) the circuit court pronounced the judgment, (p. 1;) to which the defendants excepted, (p. 1 to 356.)

Your petitioners are advised that the said judgment is erroneous, and assign the following errors therein:

I. The circuit judge has erred in supposing (p. 358) "it cannot be questioned that the ordinance is valid, so far as it does not violate any contract rights."

Construeing the act of Feb. 25, 1834, according to the ordinary sense of the words, it must be held that it gave to the railroad company authority to use locomotive engines on any part of the railroad made from a point within the corporation of Richmond approved by the common council. (The King v. Pease, 1 Nev. & Man., 694; 4 Barn. & Adol., 30; 24 Eng. C. L.) According to the decisions in this case, and in Vaughan
6 v. Taff Vale R. Co., 5 H. & N., 679, recognized and acted upon by the House of Lords in 1869, the "railway is a legalized highway"—"made under the authority of the legislature;" and the legislature having "authorized the construction of this highway," and "the use of locomotives on it, that is a complete answer to a claim for damages in respect to their use." (Hammersmith, &c., R. Co. v. Brand L. R., Eng. & Irish Appeals, 171, 42 B., p. 739 of Eng. edi.) The company having only done that which the act of Feb. 25, 1834, authorized them to do,

it is very clear that no fine could lawfully be imposed on the company for anything done prior to the act of May 24, 1870, (Sess. Acts 1869–'70, ch. 101, p. 125,) or, indeed, prior to the 1st of Jan., 1874, when the ordinance of Sept. 8, 1873, (p. 7) took effect.

And when it is argued that under the 10th section of that act of May 24, 1870, the council may regulate the use of streets by railroad companies, and the use of engines upon them, or exclude engines from them, it is enough to say that the ordinance in question is not a legal exercise of such power as is conferred by that act. (N. Jersey R. R. Co. v. Mayor and Com. Council of Jersey City, 27 N. J., (5 Dutcher,) 170.) The use which the company "now makes of the street is a part of its franchise. It is a liberty granted by the sovereign to its subjects, in which the latter cannot now be disturbed except by the sovereign power." (Cleveland & Pittsburg R. R. Co. v. Speer, 6 P. F. Smith, (56 Penn.,) 325.) If it be said that the sovereign power, the legislature, might regulate the use of streets and of engines upon them, or exclude engines from them, and might delegate to a municipal corporation the like power of regulation or exclusion, the answer is that an act of the legislature should be impartial, uniform, undiscriminating; and if the legislature itself had passed an act in terms similar to the ordinance in question, it would not be a rightful or valid exercise of legislative authority. Cooley on Const. Law, 370. The charter of a corporation is the law of its being; and when the power of altering or modifying it (by a future legislature) is not reserved therein, its right of transportation on a highway cannot be impaired by a legislative act of an arbitrary nature. Sound general principles must govern legislation as to carriers, whether they be natural or artificial persons, and no matter what may be the motive-power, whether camels, oxen, horses, or locomotives. If there were a class of carriers doing the business of transportation by vehicles drawn by oxen or horses, A B, confining his business to transportation on Broad street, east of Belvidere street, and E F, G H, and others, doing a like business on other streets of the city, it would be difficult to maintain the validity of a legislative act which should single out A B, and declare that no vehicle belonging to or used by him should be drawn by oxen or horses upon that part of Broad street east of Belvidere street; while vehicles belonging to or used by E F, G H, and others, were allowed to be drawn by oxen or horses upon other streets of the city, and upon another part of Broad street. The like principle must govern when there is a class of carriers doing the business of transportation by vehicles drawn or propelled by steam. A legislative act would be invalid
7 which should single out the R., F. & P. Company, and declare that no vehicle belonging to or used by this company shall be drawn or propelled by steam upon that part of Broad street east of Belvidere street, while vehicles belonging to and used by other companies are allowed to be drawn or propelled by steam upon other streets of the city. A fortiori, a mere municipal corporation, such as that which passed the ordinance of Sept. 8, 1873, could not lawfully pass that ordinance; and it must be held invalid.

II. The obligation of a contract is impaired. Although, before the railroad was made from a "point within the corporation of Richmond," it was very proper for the council to consider the conveniences and inconveniences that might come from running locomotives to or from that point, yet when by the resolution of the council, adopted on the 23d of December, 1834, the point therein mentioned was approved, it was a necessary consequence, under § 24 of the company's charter, that the president and directors might have on the railroad from or to that

point "all machines, wagons, vehicles, carriages, and teams of any description whatsoever which they may deem necessary or proper for the purpose of transportation." Nor could the council, if they had designed or desired to do so, have prevented this consequence by any proviso in their resolution. For, under the act of February 25, 1834, the power of the council was simply to approve or not to approve a certain point; it could not, when it approved the point, retain any power or privilege inconsistent with such approval or its necessary consequences.

Not only was there, in 1834, a contract between the company and the State, to which the council, by its resolution of the 23d of December in that year, gave effect, so far as it was then empowered to act in the matter, (Mercer, &c., vs. Pittsburg, F't Wayne & Chicago R. Co., 12 Casey, 99,) but in 1838, when questions had arisen—and there was some conflict of interests—between the city and the company, there was a compromise of those interests, which strengthened and confirmed the rights of the company under the "contract between the government acting in its sovereign capacity with the company, founded on the mutual considerations moving from one party to the other." (State vs. Noyes, 47 Maine, 205.) This contract being binding equally upon the government and the corporation, "the privileges granted thereby cannot be changed or impaired by the legislature" without just compensation. (S. C., pp. 205, 206.) They could not be changed or impaired by requiring "of this company a duty which is not expressly enjoined by the charter, and prescribing a fine for the omission to comply; thus making the omission a crime." (S. C., 208.) Nor can they be changed or impaired by prohibiting the company from doing an act which is expressly allowed by the charter, and prescribing a fine for non compliance with such prohibition; thus making the doing that which is allowed by its charter and by the contract with it a crime.

Whatever may be the just influence of the maxim, "salus populi suprema lex," the proper extent of the so called police power, it is denied that private corporations, such as this company, can be in any degree affected by a law passed for the sole purpose of promoting the convenience of "the public generally, or any citizens or classes of citizens, in contravention of provisions in the charters of such private corporations respectively, unless it is by the constitutional provision of taking private property for public uses, and upon compensation therefor." (S. C., 211.) In other States it has not yet been discovered "that legitimate police regulations will extend to matters conducive to the convenience of the public, when they conflict with the recognized rights of other parties." (S. C., 213.) On the contrary, it is well observed that "it chartered rights may be impaired, and new duties imposed upon a corporation (without compensation is effectually secured) with success, in contravention of stipulations in the charter, under the principle that it is merely the exercise of the police power to promote public convenience, it is a new and easy mode by which this constitutional security of private property and privileges may be broken down." (S. C., 216.)

Your petitioners insist that the judgment of the circuit court is not only not according to the constitution of the State of Virginia, but is repugnant to the tenth section of the first article of the Constitution of the United States, and to the tenth article of the amendments to said Constitution, and to the fourteenth amendment thereof.

III. That portion of what is now Broad street, which lies between Belvidere street and a point about midway between Henry and Monroe streets—a distance of 513 feet—was not a street, nor within the corporate

limits of the city, when the railroad company was incorporated, nor until the extension of the corporate limits by the act of February 13, 1867; and this act gave to the city no additional power as to railroads. The change of the city lines did not in the least change or impair the rights of the railroad company. (Commonwealth vs. Erie and N. Eastern R. R. Co., 27 Penn., (3 Casey,) 339.) And yet the police justice has given, and the circuit court has affirmed, a judgment against the company on a summons for violation of ordinance "in running a steam-engine on Broad street east of Belvidere street." This summons is effectually answered by showing that the company has the right of "running a steam-engine on Broad street east of Belvidere street." Even if the ordinance be so framed as to admit of a valid summons to enforce it, which it is insisted it is not, still the summons as issued can furnish no valid foundation for a judgment against the company.

IV. The judgment rendered by the circuit court transcends its power. (See Code, ch. 147, § 17, p. 1007, of edi. 1873.)

Wherefore your petitioners pray for a writ of supersedeas to the said judgment.

THE PETITIONERS ABOVE NAMED,
By CON. ROBINSON,
One of their Counsel.

9 We, the undersigned, being counsel of the appellate court, certify that in our opinion it is proper that the decision mentioned in the foregoing petition should be reviewed by the supreme court of appeals.

CON. ROBINSON

AUGUST 31, 1874.

To the clerk of the supreme court of appeals at Richmond:

Writ of error and supersedeas awarded. Bond required in the penalty of $1,000, conditioned as the law directs.

JOS. CHRISTIAN.

SEPTEMBER 2, 1874.

VIRGINIA:

Pleas before the circuit court of the city of Richmond, at the court-room thereof in said city, on Monday, the 29th of June, 1874:

THE RICHMOND, FREDERICKSBURG AND Potomac Railroad Company, pl'ff.,
against
THE CITY OF RICHMOND, DEF'T.

Upon an appeal from a judgment of the police-justice of the city of Richmond, rendered on the 17th day of January, 1874.

This day came the parties by their attorneys, and the court having maturely considered this case, and the arguments of counsel heard, it seems to the court here, for reasons stated in writing and made a part of the record, that there is no error in the said judgment. Therefore, it is considered that the same be affirmed, and that the def't in error recover again't the plaintiff in error the fine of five hundred dollars imposed by the police-justice of this city, with interest thereon, to be computed after the rate of six per centum per annum, from the 17th day of

January, 1874, (the date of the judgment of said police-justice) until paid, with damages according to law, and its costs by it about its defence herein expended.

MEMORANDUM.—The plaintiff this day excepted to an opinion of the court given against it on the trial of this cause, and tendered its bill of exceptions, which was received, signed, sealed, and ordered to be made a part of the record; which bill of exceptions is in the words and figures following, to wit:

10 *Bill of exceptions.*

RICHMOND, F. & P. R. R. CO.
vs.
CITY OF RICHMOND.

In circuit court of Richmond, on appeal from judgment of the police-justice.

This case, by consent of parties, was submitted to the court upon the following evidence and admissions of the parties:

No. 1. Printed pamphlet containing the charter of the appellants, and an amendment of the same, passed at the same session of the legislature, and the correspondence and negotiation between the appellants and the committee of the common council of Richmond, and the same is in these words and figures, to wit:

No. 1.

To the president and members of the council of the city of Richmond:

At a large meeting of the citizens of Richmond, held in Clay ward, on the evening of the 7th day of September, 1871, the undersigned were appointed a committee to bring to the attention of your body the subject of the removal of the track of the Richmond, Fredericksburg and Potomac Railroad from Broad street, and for the improvement of said street.

In furtherance of this object, we respectfully ask the appointment of a special committee, composed of members of your body, authorized to consider and report to the council a plan by which the object sought may be accomplished, and we respectfully propose to place before that committee such facts and arguments as may be deemed proper in aiding said committee in arriving at a just and proper conclusion on the subject referred to them, without doing injustice to any party interested.

VINCENT BARGAMIN,
F. P. TURNER,
JOHN G. HOUCK,
D. W. WILTZ,
ANDREW JINKINS,
F. LAUBE,
Committee.

In council of Richmond, September 18, 1871: Read and referred to a special committee of six, one from each ward, viz: Messrs. Chesterman, Wynne, Sloan, Braselman, Whitlock, and Lipscomb.

E. C. HOWARD,
City Clerk.

11 To the council of the city of Richmond:

GENTLEMEN: The committee, appointed in response to a petition from citizens residing on Broad street, in reference to the removal of the track of the Richmond, Fredericksburg and Potomac Railroad Company, beg leave to report, that they have given the subject careful consideration, and respectfully recommend that the council accept the proposition of the president of the company for the sale of its property, upon the terms and conditions expressed in his communication, (which is submitted with this report,) provided that the permanent and exclusive use of 8th street, between Byrd street and the river, shall be guaranteed to the Richmond, Fredericksburg and Potomac, and the Richmond and Petersburg companies, on condition that the Richmond and Petersburg Railroad Company shall open a street through its property of a size and condition that shall be acceptable as a mode of ingress and egress to all the owners of property interested in 8th street.

A. D. CHESTERMAN,
Chairman Committee.

(Copy.)

RICHMOND, *27th March*, 1871.

THO'S H. WYNNE, Esq.,
Chairman Committee, &c., City Council, Richmond:

DEAR SIR: I have duly received and considered your note of the 25th instant, informing me that "at the last meeting of the city council a resolution was adopted looking to the purchase of the property belonging to this company, at the prices fixed by the assessment of the same for taxation by the city, with a view to removing all of its operations from Broad street, between 7th and 9th streets."

Being under the necessity of leaving Richmond to-day on official business, which may occupy me during the whole week, I may not be able to submit the foregoing proposition to the board of directors of this company for their consideration and action before some day during the next week; but I will do so as early as practicable after my return, recommending a sale of the property referred to, and the consequent removal from its vicinity of this company's railroad, upon the basis of the terms suggested in your letter of the 25th instant, provided the further condition of such sale should be the allowance of sufficient time, not less than six months, during the proper season of the year for building, for the erection by this company elsewhere of the structures which it shall need for its purposes in lieu of those which it now occupies and uses at the corner of Broad and 8th streets, and such a proposition, I am inclined to believe, would be favorably considered by the board of directors, although, of course, I have no authority to anticipate their action upon it.

I am, very respectfully, your obedient servant,
(Signed) P. V. DANIEL, JR.,
President R., F. & P. R. R. Co.

12 (Copy.)

RICHMOND, *19th April*, 1871.

THO'S H. WYNNE, Esq.,
Chairman Committee, &c., of Council of City of Richmond:

DEAR SIR: Herewith you will receive a copy of the proceedings of the directory of this company, in relation to the subject of your communication to me of the 25th ult.

You will perceive that the resolution of the directory conforms to the terms of my reply to that communication, with the addition that it contemplates that this company, abandoning its right to the use of Broad street, as at present exercised, shall acquire, in conjunction with the Richmond and Petersburg Railroad Company, the permanent and exclusive use, so far as the council has authority to grant it, of 8th street south of Byrd street, with the right to enclose it with an open fence and gates, and to cover any part of it with a roof not less than 17 feet clear above the rails of its tracks.

Upon this portion of 8th street, between Byrd street and the river, but a few hundred feet in length, there is no property abutting which is not owned by one of these two railroad companies, except a lot fronting but a few feet upon it, formerly occupied by the paper-mill, and that lot has a much better front on 9th and Arch streets, unobstructed by railroad track or trains. An additional access to that lot might be given, if needed, by a street leading from and on a level with Byrd street, along the line of the paper-mill canal, between 8th and 9th streets. And when it is considered that the concession of the permanent and exclusive use of this short portion of 8th street, which, from its location, can never be a thoroughfare, and which is bounded almost exclusively by railroad property, not only accommodates two important railroads entering the city, but through one of them (the Richmond and Petersburg) connects with a third, (the Richmond and Danville,) and at the same time restricts their use of the streets of the city to this very small portion of one of them, cut off by its locality from all others, and on the very edge of the city and river, the advantages to the city of such an arrangement cannot fail to present themselves to the minds of the council.

I am, very respectfully, your obedient servant,
(Signed) P. V. DANIEL, JR.

At a meeting of the board of directors of the Richmond, Fredericksburg and Potomac Railroad Company, held 18th April, 1871—

The president submitted to the board a correspondence between Tho's H. Wynne, esq., chairman of a committee of the council of the city of Richmond, and himself, in relation to a sale to the city of this
13 company's real estate, situated at the intersection of Broad, Marshall and 8th streets, and the consequent removal therefrom, and from Broad street, south of Gilmer street, of the depot, workshops and operations of the company; upon consideration whereof, it was—

"Resolved, That the president be authorized to sell the said property, exclusive of tracks and other peculiarly railroad appurtenances, or machinery thereon, for an amount in cash, or its equivalent, not less than the amount at which it was last assessed for city taxes: provided, that this company shall be under no obligation to remove its machinery and operations from the present terminus of its road, at the intersection of Broad and Eighth streets, before the expiration of six months, during a season of the year suitable for building, after the payment of the price of the said property shall have been made or satisfactorily secured; and after the council of the city shall have granted, so far as it is competent to do so, to this company, in conjunction with the Richmond and Petersburg Railroad Company, the permanent right to the exclusive use of Eighth street, south of Byrd street, with a permanent right to enclose it, and to cover part of it with a roof not less than seventeen feet in the clear above the rails of the railroad track."

At a meeting of the board of directors of the Richmond, Fredericksburg and Potomac Railroad Company, held May 27th, 1871—

The letter from the clerk of the council of the city of Richmond, communicating a resolution of the council prohibiting the use of locomotive engines on this company's roadway, in Broad street, which was laid before the board at its meeting on the 17th instant, and then laid on the table, was, on motion, taken up, and after full consideration thereof, it was

1. Resolved, That in the judgment of the board of directors of this company, and of the legal counsel of this company, the legal and equitable right of this company to use locomotive engines on its roadway in Broad street, so long as it shall be convenient to it to do so, given in its charter by the supreme legislature of the State, is complete, and cannot lawfully or justly be divested or restricted by any action of the council of the city of Richmond.

2. Resolved, That this board respectfully suggest to the council of the city of Richmond that if, in their judgment, or in that of the legal counsel of the city, there be any good reason for denying or questioning this right, it is a question which may be most properly decided by the courts, before whom, if pressed, it must inevitably be brought, and to whose judgment upon it this company therefore invites an appeal.

3. Resolved, That if by any reasonable change of the grade of this company's roadway through any portion of Broad street, by a sale to the city of this company's real estate on Broad street, near Eighth street, at its assessed value, or by any other measure which is reasonable, and not violative of this company's rights and interests, any supposed objections to its use with locomotives, of its roadway in Broad street, can be obviated or removed, this board will be ever ready to give
14 to any proposition or suggestion from the council of the city, made for that purpose, the most respectful consideration, with a sincere desire to remove all just cause of complaint.

4. Resolved, That the president of this company be requested to communicate these resolutions of this board to the president of the council.

RICHMOND, FREDERICKSBURG & POT. R. R. Co.,
PRESIDENT'S OFFICE,
Richmond, Va, 6th October, 1871.

Mess'rs A. D. CHESTERMAN and T. H. WYNNE, and OTHERS, *Committee, &c.:*

GENTLEMEN: In accordance with the request made at my interview with two of your number on this date, in relation to the sale of this company's property on Broad street, at its intersection with Eighth street, and the discontinuance of the use by it with its locomotives and trains of its railway in Broad street, south of Gilmer street, that I should put in writing for your use the substance of the views of this company upon that subject, as then expressed to you by me, I beg leave to say, that they are nearly all contained in resolutions of the directory of this company, and in communications heretofore made by me to the chairman of your committee, M'r Wynne, and to the council of the city of Richmond, to copies of which, herewith enclosed, I would respectfully invite your attention and consideration.

In addition to the views therein presented, I then called your attention to the fact that the use of this company of its railway in Broad street, and of its terminal station at the intersection of Broad and Eighth street, was a franchise most valuable to this company, and es-

pecially most convenient to its local travel and trade, of its right to the enjoyment of which its directory could entertain no doubt, sustained as it is by the opinions of many of the most eminent legal counsel in the State, and for the surrender of which it has asked of the council no valuable consideration beyond the concession to it, in conjunction with two other railroad companies, of the exclusive use, for railroad purposes, of a few hundred feet of Eighth street, south of Byrd *of* street, less use for any other purpose.

I also called your attention to the consideration that this company could not be expected to surrender the use of its present terminal station on Broad street, and of its railway, locomotives, and trains through Broad street, to and from that point, the right to which is now so firmly established and indefeasible, by the action of the supreme legislature of the State, and of previous councils of the city of Richmond, without securing previously, or at least simultaneously, the right, equally complete and indefeasible, at least so far as the city council can give it, to the use of the property to which its new workshops and depots could be removed, situated on the south side of Byrd, between 7th and Eighth streets, and on the south side of Broad street, between Laurel and New streets, and to as full and complete use of its railway tracks needed for such use of that property, as it now enjoys and is entitled to in the tracks connected with its present terminal station at the intersection of Broad and Eighth streets. Without such assurance or guarantee that this company would be undisturbed in the future in the use of such localities for its depot and workshops, and of all suitable access to them, its directory would not be justified in relinquishing those to which its right is now indisputable. Whether the authority of the council of the city extends to changing, even with the consent of this company, its terminal station within the city, and its access thereto, after the same has been once fixed by the action of the council in pursuance of the act of the legislature incorporating the company, so as to exclude the right of any citizen to contest and successfully resist that change, if prejudicial to his interest, is a question which has but recently occurred to my mind, and upon which it would be proper for the directory of this company to be satisfactorily advised before parting with any of its existing rights. But assuming that there is no foundation for this doubt, and that the action of the city council, authorizing such a change, would protect this company from the conflicting claims of any private citizen, I am prepared to say, that I would recommend to the directory of this company the sale of its property at the intersection of Broad and Eighth streets, upon the conditions and terms expressed in this letter, and in the papers and letters accompanying it. What would be the final action at this time of the directory upon that recommendation, I am, of course, unauthorized to say; but their concurrence in it might be not unreasonably expected from their former action upon the subject.

I need scarcely add that any communication from the council will receive their respectful consideration.

I am, gentlemen, very respectfully, your *obl't* servant,

P. V. DANIEL, JR.,
Pres't of the R., F. & P. R. R. Co.

An act incorporating the stockholders of the Richmond, Fredericksburg and Potomac Railroad Company. Passed February 25, 1834.

1. Be it enacted by the general assembly, That it shall be lawful to open books in the city of Richmond and town of Fredericksburg, and at such other place or places as a majority of the commissioners herein-

after named shall think fit, under the direction of Jno. H. Eustace, Fleming James, Lewis Webb, John A. Lancaster, James Bosher, Rich-
16 ard C. Wortham, Conway Robinson, Wilson Allen, Fayette Johnson, W. S. Blackford, John L. Marye, John Dickerson, and Joseph M. Sheppard, or any two of the same, or of any deputies or agents of the said commissioners, for the purpose of receiving subscriptions to the amount of seven hundred thousand dollars, in shares of one hundred dollars each, to constitute a joint capital stock, for the purpose of making a railroad from some point within the corporation of Richmond, to be approved by the common council, to some point within the corporation of Fredericksburg, and for the purpose of extending the same, should the company hereby incorporated, at the commencement of the work or at any time afterwards, deem it advisable to do so, from its point of termination within the town of Fredericksburg to the Potomac River or some creek thereof, and for providing everything necessary and convenient for the purpose of transportation on the same.

2. The time and place for receiving subscriptions as aforesaid shall be advertised in one or more newspapers published in the city of Richmond and town of Fredericksburg, and the books for receiving the same shall not be closed in less than ten days; and if it shall appear that more than seven thousand shares of the capital stock aforesaid shall have been subscribed for within the said ten days, it shall be the duty of the said commissioners, or any five of them, to reduce the number of shares subscribed for among the subscribers in fair and equal proportions to the amount of stock subscribed for respectively by each, until the whole amount of shares shall be reduced to seven thousand; but if the whole amount of shares shall not be subscribed for within ten days from the time the books shall be opened to receive subscriptions, then the books may be closed or continued open, or closed and re-opened without further notice, as a majority of the above-named commissioners may judge to be most expedient, until the whole number of shares shall be subscribed for.

3. When three thousand shares shall be subscribed in manner aforesaid, the subscribers, their executors, administrators, or assigns, shall be, and they are hereby, declared to be incorporated into a company, by the name and style of the Richmond, Fredericksburg and Potomac Railroad Company, and by that name shall be capable in law of purchasing, holding, selling, leasing, and conveying estates, real, personal, and mixed, so far as shall be necessary for the purposes hereinafter mentioned and no farther, and shall have perpetual succession, and by said corporate name may sue and be sued, and may have and use a common seal, which they shall have power to alter or renew at their pleasure, and shall have and enjoy, and may exercise all the powers, rights, and privileges which other corporate bodies may lawfully do, for the purposes mentioned in this act; and may make all such by-laws, rules, and regulations, not inconsistent with the laws of this State or of the United States, as shall be necessary for well ordering and conducting the affairs of the company.

17 4. Upon any subscription of stock as aforesaid, there shall be paid at the time of subscribing, to the said commissioners, their deputies or agents appointed to receive such subscriptions, the sum of two dollars on every share subscribed, and the residue thereof shall be paid in such instalments and at such times as it may be required by the president and directors of said company. The said commissioners and deputy commissioners shall forthwith, after the election of the president and directors of the company, pay over to the said president and direc-

tors all moneys received by them, and in failure thereof the said president and directors may recover the amount due from them, or from any one or more of them, by motion, on ten days' previous notice, in the superior or inferior court of any county or corporation wherein such commissioner or commissioners, their executors or administrators, may reside. The clerk shall endorse upon the execution, which shall issue upon such judgment, that no security shall be taken, and the sheriff or *or* other officer shall govern himself accordingly.

5. When three thousand shares or more of the stock shall have been subscribed, public notice of that event shall be given by any three or more of the said commissioners, who shall have power at the same time to call a general meeting of the subscribers at such convenient place and time as they shall name in the said notice. To constitute any such meeting, a number of persons entitled to a majority of all the votes which could be given upon all shares subscribed shall be present, either in person or by proxy: and if a sufficient number to constitute a meeting do not attend on that day, those who do attend shall have power to adjourn from time to time, until a meeting shall be formed.

6. The subscribers, at their general meeting before directed, and the proprietors of the stock at every annual meeting thereafter, shall elect a president and five directors, who shall continue in office, unless sooner removed, until the next annual meeting after their election, and until their successors shall be elected: but the said president or any of the directors may, at any time, be removed, and the vacancy thereby occasioned be filled by a majority of the votes given at any general meeting. The president, with any three or more of the directors, who shall appoint one of their own body president pro tempore, shall constitute a board for the transaction of business. In case of vacancy in the office of president or any director happening from death, resignation, removal, or disability, such vacancy may be supplied by appointment of the board or by the proprietors in general meeting.

7. The president and directors of the said company shall be and they are hereby invested with all the rights and powers necessary for the construction, repair, and maintaining of a railroad, to be located as aforesaid, with as many sets of tracks as they or a majority of them may deem necessary, and may cause to be made, and also to make and construct all works whatsoever, which may be necessary and expedient in order to the proper completion of the said railroad: and they
18 or a majority of them may make or cause to be made branches or lateral railroads in any direction whatsoever in connexion with the said railroad, not exceeding ten miles each in length, and shall have, possess, and may exercise, in the construction, use, and repair of the same, the same rights and powers, and shall be entitled, on the completion of any branch or lateral railroad, to the same rights, privileges, and immunities, and be subject to the same pains, penalties, and obligations in relation to the same, as are hereby prescribed in relation to their principal line of railroad: provided, however, that before any railroad shall be constructed by the said company between the town of Fredericksburg and Potomac River, or any creek thereof, they shall cause a survey to be made by their engineer, from the town of Fredericksburg to some point on Acquia Creek, or on the Potomac River contiguous thereto, and a survey also to be made by their engineer from the said town of Fredericksburg to the Potomac Creek or some point on the Potomac River contiguous thereto: and the soundings from the channel of the river to the point of termination of the said railroad to be carefully taken. And after the construction of the said railroad, there shall

always be reserved at the termination thereof, a place of convenient size to be used as a public landing. And provided, moreover, that no branch or lateral railroad, exceeding two miles in length, shall be commenced until the expediency of making the same shall have been determined on at a general meeting of the stockholders by two-thirds of the votes which could legally be given in favor of the same.

8. It shall be the duty of the said president and directors, first, to defray with any moneys which may be received by them of the commissioners, the expenses of the preliminary surveys for the railroad made prior to the incorporation of the company. The said president and directors shall afterwards have power to make contracts with any person or persons on behalf of the company, for making the said railroad, and performing all other works respecting the same, which they shall judge necessary and proper; and to require from the subscribers, from time to time, such advances of money on their respective shares as the wants of the company may demand, until the whole of their subscriptions shall be advanced: to call, on any emergency, a general meeting of the subscribers, giving one month's notice thereof in one of the newspapers printed in the city of Richmond or town of Fredricksburg, to appoint a treasurer, clerk, and such other officers as they may require, and to transact all the business of the company during the intervals between the general meetings of the stockholders.

9. If any stockholder shall fail to pay the sum required of him by the president and directors, or a majority of them, within one month after the same shall have been advertised in one of the newspapers published in the city of Richmond and town of Fredericksburg, it shall and may be lawful for the president and directors, or a majority of them, to sell at public auction, and to convey to the purchaser, the share or shares of such stockholders so failing or refusing, giving one month's
19 previous notice of the time and place of sale, in manner aforesaid; and after retaining the sum due, and all charges of the sale, out of the proceeds thereof, to pay the surplus over to the former owner, or to his legal representative; and if the said sale shall not produce the sum required to be advanced, with the incidental charges attending the sale, then the president and directors may recover the balance of the original proprietor or his assignee, or the executor or administrator, or either of them, by motion, on ten days' notice, before the court of that county of which he is an inhabitant, or by a warrant before a justice of such county; and any purchaser of the stock of the company, under the sale by the president and directors, shall be subject to the same rules and regulations as the original proprietors.

10. Be it further enacted, That if the capital stock of the company hereby incorporated shall be found insufficient for the purposes of this act, it shall and may be lawful for the president and directors of said company, or a majority of them, from time to time, to increase the said capital stock to an amount not exceeding one million of dollars, by the addition of as many shares as they may deem necessary; first giving to the individual stockholders, for the time being, or their legal representatives, the option of taking such additional shares in proportion to the amount of stock respectively held by them, and opening books of subscription in the city of Richmond, and town of Fredericksburg, as is herein prescribed for the original stock of the company, for any balance of capital stock created, which may not be taken by the stockholders for the time being, or in their behalf; and the subscribers for such additional shares of the capital stock in the said company are hereby declared to be thenceforward incorporated into the said company

with all the privileges and advantages and subject to all the liabilities of the original stockholders.

11. Be it further enacted, That the said president and directors, or a majority of them, shall have power to borrow money for the objects of this act, to issue certificates or other evidence of such loans, and to make the same convertible into stock of the company, at the pleasure of the holder; provided that the capital stock shall not thereby be increased to an amount exceeding one million of dollars; and to pledge the property of the company for the payment of the same and its interest; provided, that no certificate of loan convertible into stock, or creating any lien or mortgage on the property of the company, shall be issued by the president and directors, unless the expediency of making a loan on such terms, and of issuing such certificates, shall have first been determined on at a general meeting of the stockholders, by two-thirds of the votes which could legally be given in favor of the same.

12. Be it further enacted, That the said president and directors, their officers, agents, and servants shall have full power and authority to enter upon all lands and tenements through which they may desire to conduct their railroad, and to lay out the same according to their pleasure, so that the dwelling-house of no person be invaded without his consent; and that they shall have power to enter in and lay out such contiguous land as they may desire to occupy as sites for depots, toll-houses, warehouses, engine-sheds, workshops, and other buildings for the necessary accommodation of their officers, agents, and servants, their horses, mules, and other cattle, and for the protection of the property entrusted to their care; provided, that the land so laid out on the general line of the railroad shall not exceed, except at deep cuts and filling, eighty feet in width, and that the adjoining land for the sites of building, unless the president and directors can agree with the owner or owners for the purchase of the same, shall not exceed one and an half acre in any one parcel. If the president and directors cannot agree with the owner or owners of the lands so entered on and laid out by them, on the terms of purchase, it shall be lawful for them to apply to the court of the county in which such land or the greater part thereof may be, and upon such application the court shall appoint five discreet, intelligent, disinterested and impartial freeholders to assess the damages to the owner from the condemnation of his land for the purposes aforesaid. No such appointment, however, shall be made, unless ten days' previous notice of the application shall have been given to the owner of the land, or to the guardian if the owner be an infant, or to the committee, the owner being non compos mentis, if such owner, guardian, or committee can be found within the county, or if he cannot be so found, then such appointment shall not be made, unless notice of the application shall have been published at least one month next preceding, in some newspaper printed as convenient as may be to the court-house of the county, and shall have been posted at the door of the court-house on the first day at least of the next preceding term of the said court. A day for the meeting of the said freeholders to perform the duty assigned them shall be designated in the order appointing them, and any one or more of them attending on that day may adjourn, from time to time, until their business shall be finished. Of the five freeholders so appointed, any three or more may act, after having been duly sworn or solemnly affirmed before some justice of the peace, that they will impartially and justly, to the best of their ability, ascertain the damages which will be sustained by the proprietor of the land from the condemnation thereof for the use of the company, and that they

will truly certify their proceedings thereupon to the court of the said county.

13. It shall be the duty of the said freeholders, in pursuance of the order appointing them, to assemble on the land proposed to be condemned, and after viewing the same and hearing such proper evidence as either party may offer, they shall ascertain, according to the best of their judgment, the damages which the proprietor of the land will sustain by the condemnation thereof for the use of the company. In performing this duty they shall consider the proprietor of the land as being the owner of the whole fee-simple interest therein; they shall take into consideration the quantity and quality of the land to be condemned, the additional fencing which will be required thereby, and all other inconveniences which will result to the proprietor from the condemnation thereof, and shall combine therewith a just regard to the advantages which the owner of the land will derive from the construction of the railroad.

14. When the said freeholders shall have agreed upon the amount of damages, they shall forthwith make a written report of their proceedings, under their hands and seals, in substance as followeth: "We, , freeholders appointed by an order of the county court of , for the purpose of ascertaining the damages which would be sustained by , the proprietor of certain lands in the said county, which the president and directors of the Richmond, Fredericksburg and Potomac Railroad Company propose to condemn for their use, do hereby certify that we met together on the land aforesaid on the of , the day appointed therefor by the said order, (or the day to which we were regularly adjourned from the day appointed for our meeting by the said order,) and that having been first duly sworn, and having viewed the premises, we proceeded to estimate the quantity and quality of the land aforesaid, the quantity of additional fencing which would probably be occasioned by its condemnation, and all other inconveniences which seemed to us likely to result therefrom to the proprietor of said land; that we combined with these considerations, as far as we could, a just regard to the advantages which would be derived by the proprietor of said land from the construction of the railroad for the use of which the said land is to be condemned; that under the influence of these considerations, we have estimated, and do hereby assess the damages aforesaid, at the sum of . Given under our hands and seals this day of ." At the foot of the report so made, the magistrate before whom the said freeholders were sworn shall make a certificate in substance as follows: " county, set: I, , a justice of the peace for said county, do hereby certify that the above-named freeholders, before they executed their duties as above certified, were solemnly sworn (or affirmed) before me, that they would impartially and justly, to the best of their ability, ascertain the damages which would be sustained by the above named , from the condemnation of the above-mentioned land for the use of the Richmond, Fredericksburg and Potomac Railroad Company, and that they would certify truly their proceedings thereupon to the court of the said county. Given under my hand this day of ."

15. The report of the freeholders so made, together with the certificate of the magistrate as aforesaid, shall be forthwith returned by the said freeholders to the court of the county; and unless good cause be shown against the report, it shall be confirmed by the court and entered of record; but if the said report should be disaffirmed, or if the said freeholders being unable to agree should report their disagreement, or

if from any other cause they should fail to make a report within a reasonable time after their appointment, the court may, at its dis-
22 cretion, as often as may be necessary, supersede them, or any of them, appoint others in their stead, and direct another view and report to be made in the manner above prescribed.

16. On the confirmation of any such report, and on the payment or tender to the proprietor of the land of the damages so assessed, or the payment of said damages into court, when for good cause shown the court shall so have ordered it, the land viewed and assessed as aforesaid shall be vested in the Richmond, Fredericksburg and Potomac Railroad Company, in the same manner as if the proprietor had sold and conveyed it to them.

17. While these proceedings are depending for the purpose of ascertaining the damages to the proprietor for the condemnation of his land, and even before they shall have been instituted, the president and directors, if they think that the interest of the company requires it, may by themselves, their officers, agents, and servants, enter upon the lands laid out by them as aforesaid, and which they desire to condemn, and apply the same to the uses of the company. If when they so take possession proceedings to ascertain the damages as aforesaid be pending, it shall be their duty diligently to prosecute them to a conclusion. And when the report of the freeholders ascertaining the damages shall be returned and confirmed, the court shall render judgment in favor of the proprietor of the land for the amount thereof, and either compel its payment into court, or award process of execution for its recovery, as to them shall seem right.

18. In the mean time no order shall be made, and no injunction shall be awarded by any court or judge, to stay the proceedings of the company in the prosecution of th'ir works, unless it be manifest that they, their officers, agents or servants, are transcending the authority given them by this act, and that the interposition of the court is necessary to prevent injury that cannot be adequately compensated in damages.

19. If the president and directors shall take possession of any land before the same shall have been purchased by them, or condemned and paid for according to the provisions of this act, and shall fail for forty days to institute proceedings for its condemnation as aforesaid, or shall not prosecute with due diligence the proceedings commenced for that purpose, it shall be lawful for the proprietor of the land, upon giving to the said president and directors, or any one of them, ten days' previous notice, to apply to the court of the county in which the land or the greater part thereof shall lie: and upon such application the court shall appoint five discreet, intelligent, disinterested, and impartial freeholders to assess the damages to the owner from the condemnation of his land for the use of the company: shall appoint a day for their meeting to perform the duties assigned them, and shall dismiss at the costs of the company any proceeding then depending on their behalf for the condemnation of the same land. The freeholders so appointed, any three or more of whom may act, shall proceed in the performance of their duties in all respects in the same manner as if they had been ap-
23 pointed on the application of the president and directors of the company. And the court shall in like manner confirm or disaffirm their report, supersede them, or any of them, and appoint others in their stead, or direct another view and report to be made, as often as may be necessary. And when any such report ascertaining the damages shall be confirmed, the court shall render judgment in favor of the proprietor for the damages so assessed, and double costs; and shall thereupon

either compel the company to pay into court the damages and costs so adjudged, or award process of execution therefor, as to them shall seem right.

20. When the judgment rendered for the damages assessed and costs shall be satisfied by the payment of the money into court or otherwise, the title of the land for which such damages are assessed shall be vested in the company in the same manner as if the proprietor had sold and conveyed it to them.

21. The said president and directors, for the purpose of constructing their railroad as aforesaid, and the works necessarily connected therewith, or of repairing the same after they shall have been made, or of enlarging or otherwise altering the same, shall be at liberty by themselves, their officers, agents or servants, at any time to enter upon any adjacent lands, and to cut, quarry, dig, take and carry away therefrom any wood, stone, gravel or earth which they may deem necessary: provided, however, that they shall not, without the consent of the owner, cut down any fruit-tree, or any tree preserved in any field or lot for shade or for ornament, or take any timber, gravel, stone or earth constituting any part of any fence or building. For all wood, stone, gravel, or earth taken under authority of this act, and for all incidental injuries done to the inclosures, crops, woods, or grounds, in taking or carrying the same away, the said president and directors shall make to the owner a fair and reasonable compensation, to be ascertained, if the parties cannot agree, by any three impartial, intelligent, and disinterested freeholders, who, being appointed for that purpose by any justice of the peace thereto required by the owner, shall be sworn by him, and shall then ascertain the compensation, upon their own view of the wood, stone, gravel, or earth taken, and of the injury done as aforesaid in taking them: provided, however, that it shall be the duty of the owner or owners to show to the justice of the peace to whom the application is made that ten days' previous notice of the time of making the same has been given to the president or one of the principal agents of the said railroad company, and no award which may be given under any appointment without such notice shall be obligatory or binding on said company.

22. If the said president and directors, in entering upon the land of any person under the authority of this act, for the purpose of laying out or constructing, enlarging, altering, or repairing any of their said works, shall, by themselves or their officers, do any wanton or wilful injury to such land or its appurtenances, or to the crops growing or gathered,
21 or to any other property thereon, the Richmond, Fredericksburg, and Potomac Railroad Company shall pay to the person so injured double the amount of the damages which shall be assessed by jury in any proper action therefor; or if such injury be done by any person or persons who may have contracted with the company for the construction of any portion of their railroad, or any of the works connected therewith, he or they shall be responsible to the party injured in the like amount.

23. Whenever in the construction of said railroad it shall be necessary to cross or intersect any established road or way, it shall be the duty of the said president and directors so to construct the said railroad across such established road or way as not to impede the passage or transportation of persons or property along the same; or where it shall be necessary to pass through the land of any individual, it shall also be their duty to provide for such individual proper wagon-ways across said railroad from one part of his land to the other. Provided, however,

that in order to prevent the frequent crossing of established roads or ways it may be lawful for the said president and directors to change the same at points where they may deem it expedient to do so; and that for entering upon or taking of any lands which may be necessary therefor they shall be and are hereby authorized to proceed under the provisions of this act, as in the case of land necessary for their railroad: provided farther, that previous to the making of any such change the said company shall make and prepare a road equally good with the portion of the road proposed to be substituted; but nothing herein contained shall be so construed as to make it encumbent on the company to keep in repair the portion of any road which they may have changed as aforesaid.

24. The said president and directors, or a majority of them, shall have power to purchase with the funds of the said company, and place on the railroad constructed by them under this act, all machines, wagons, vehicles, carriages, and teams of any description whatsoever, which they may deem necessary or proper for the purposes of transportation.

25. All machines, wagons, vehicles, and carriages, purchased as aforesaid with the funds of the company, and all their works constructed under the authority of this act, and all profits which shall accrue from the same, shall be vested in the respective shareholders of the company forever, in proportion to their respective shares; and the same shall be deemed personal estate, and shall be exempt from any public charge or tax whatsoever.

26. Upon the railroad hereby authorized the company shall have the exclusive right of transportation. When it is completed, they shall at all times furnish and keep in good repair the necessary carriages and other requisites for the safe and convenient transportation of persons and property; and it shall be their duty at all times, upon the payment or tender of the tolls hereby allowed, to transport to any convenient place of delivery on the road which the owner of the goods may indicate, and there to deliver all articles which shall be delivered to them for transportation, or offered to them in proper condition to be transported, at some place on the road convenient for the reception thereof.

27. They shall give no undue preference in transportation to the property of one person over that of another, but as far as practicable shall carry each in the order of time in which it shall be delivered or offered for transportation, with the tolls paid or tendered. If the company or any of its officers or agents shall fail to receive, transport, or deliver, in due time, any property so offered or delivered to them for transportation, or shall fail to take up or set down any passenger or passengers at such point as he or they may desire, upon the payment or tender of the passage-money hereby allowed, they shall forfeit and pay to the party so injured double the amount of the lawful tolls paid or tendered, and shall, moreover, be liable to an action on the case, in which full damages and double costs shall be recovered.

28. So soon as any portion of the railroad hereby authorized may be in readiness for transportation it shall be lawful for the said president and directors to transport by their officers and agents, or by contractors under them, persons and property on the same, and they shall have power to charge for the transportation of persons, goods, produce, merchandise, and other articles, and for the transportation of the mail, any sum not exceeding the following rates, viz: on persons not exceeding eight cents per mile for each person, unless the distance which any person be transported be less than ten miles; in which case

the president and directors may be entitled to make an extra charge of fifty cents for taking up and putting down each person so transported; for the transportation of goods, produce, merchandise, and other articles, not exceeding an average of ten cents per ton per mile, and for the transportation of the mail such sum as they may agree for: and the said president and directors shall be furthermore entitled to demand and receive for the weighing, storage, and delivery of produce and other commodities at their depots and warehouses, rates not exceeding the ordinary warehouse rates charged in the city of Richmond and town of Fredericksburg.

29. Be it further enacted, That if the said president and directors shall deem it advisable to construct the bridges which may be necessary on the line of their railroad of sufficient width to admit of the passage of common roads as well as their railroad over the same, they may be entitled to demand and receive from all persons, and for wagons, carriages, and all four or two wheeled conveyances, and for all beasts of burthen, sheep, and hogs, passing the same, such rates of toll as may appear to them fair and reasonable, subject to the revision and regulation of the board of public works, from time to time: Provided, however, that no bridge, other than a railroad-bridge, shall be constructed across the Rappahannock River, at the town of Fredericksburg, without the consent of the proprietors of the bridges already erected at the said town, or at the town of Falmouth.

26 30. As soon as ten miles of the railroad hereby authorized shall be completed, the president and directors shall, annually or semi annually, declare and make such dividend as they may deem proper of the net profits arising from the resources of the said company, after deducting the necessary current and probable contingent expenses of the said company, and shall divide the same among the proprietors of the stock of the said company in proper proportions to their respective shares.

31. An annual meeting of the subscribers to the stock of the said company shall be held at such time in each year as the stockholders at their first general meeting may appoint, to constitute which, or any general meeting called by the president and directors according to the provisions of this act, the presence of proprietors entitled to a majority of all the votes which could be given by all the stockholders shall be necessary, either in person or by proxy, properly authorized. And if a sufficient number do not attend on that day, or any day appointed for a general meeting called by the directors as aforesaid, the proprietors who do attend may adjourn from time to time until a general meeting shall be had.

32. In counting all votes of the said company, each member shall be allowed one vote for each share not exceeding two shares, one vote for every two shares above two and not exceeding ten shares, and one vote for every five shares above ten by him held at the time in the stock of the company: Provided, however, that no stockholder, whether an individual, body-politic or corporate, shall be entitled to more than sixty votes on any amount of the capital stock of the said company held by him or them.

32. The president and directors shall render distinct accounts of their proceedings and disbursements of money to the annual meeting of the stockholders.

34. The works hereby required of the Richmond, Fredericksburg and Potomac Railroad Company shall be executed with diligence, and if they be not commenced within two years after the passing of this act,

and finished within ten years after the first general meeting of the stockholders, then their charter shall be forfeited.

35. The president and directors shall cause to be written or printed certificates for the shares of the stock in the said company, and shall deliver one such certificate, signed by the president and countersigned by the treasurer, to each person for the number of shares subscribed by him, which certificate shall be transferable by him, subject, however, to all payments due or to become due thereon; and such assignee, having first caused the transfer or assignment to be entered in a book of the company to be kept for that purpose, shall thenceforth become a member of the said company, and shall be liable to pay all sums due or which shall become due upon the stock assigned to him: Provided, however, that such assignment shall in no wise exempt the assignor or his representative from their liabilities to the said company for the payment of all such sums, if the assignee or his representatives shall be unable or fail to pay the same.

27 36. If any person or persons shall wilfully, by any means whatever, injure, impair, or destroy any part of any railroad constructed under this act, or any of the necessary works, machines, wagons, vehicles, or carriages belonging to the said company, such person or persons shall be punished according to the laws which may be in force at the time for the protection of the public works or property of the commonwealth.

37. Be it further enacted, That if at any time hereafter the above rates for toll and transportation shall enable the said president and directors, after the payment of all necessary expenses, and after setting apart a fair and reasonable sum for the renewal and repairs of the road, warehouses, depots, and other constructions, and of the machines, cars, and other vehicles for transportation, to divide more than fifteen per cent. on their capital stock invested, that then the said rates of toll and transportation shall be so reduced by the said president and directors as to enable them to divide fifteen per cent. and no more.

And whereas the railroad authorized by this act will form a part of the main northern and southern route between the city of Richmond and the city of Washington, and the privilege of transporting passengers on the same, and receiving the passage-money, will, it is believed, be a strong inducement to individuals to subscribe for stock in the company; and the general assembly considers it just and reasonable that those who embark in the enterprise should not be hereafter deprived of that which forms a chief inducement to the undertaking:

38. Be it therefore enacted and declared, and the general assembly pledges itself to the said company, That in the event of the completion of the said railroad from the city of Richmond to the town of Fredericksburg, within the time limited by this act, the general assembly will not, for the period of thirty years from the completion of the said railroad, allow any other railroad to be constructed between the city of Richmond and the city of Washington, or for any portion of the said distance, the probable effect of which would be to diminish the number of passengers traveling between the one city and the other upon the railroad authorized by this act; or to compel the company, in order to retain such passengers, to reduce the passage-money: Provided, however, that nothing herein contained shall be so construed as to prevent the legislature at any time hereafter from authorizing the construction of a railroad between the city of Richmond and the towns of Tappahannock or Urbanna, or to any intermediate points between the said city of Richmond and said towns: And provided, also, that nothing herein contained shall be construed to prevent the general assembly

from chartering any other company or companies to construct a railroad from Fredericksburg to the city of Washington.

39. This act shall be in force from its passage.

28 An act to amend the act entitled "An act incorporating the stockholders of the Richmond, Fredericksburg and Potomac Railroad Company." Passed March 13th, 1834.

1. Be it enacted by the general assembly, That the sixth section of an act entitled "An act incorporating the stockholders of the Richmond, Fredericksburg and Potomac Railroad Company," passed on the twenty-fifth day of February, one thousand eight hundred and thirty-four, be, and the same is hereby, repealed.

2. Be it further enacted, That the subscribers to the said company, at their general meeting directed to be holden in the fifth section of the act aforesaid, and the proprietors of the stock at every annual meeting thereafter, shall elect a president and five directors, who shall continue in office, unless sooner removed, until the next annual meeting after their election, and until their successors shall be elected; but the said president or any of the directors may, at any time, be removed, and the vacancy thereby occasioned be filled by a majority of the votes given at any general meeting. The president, with any three or more of the directors, or in the event of the sickness, disability, or absence of the president, any three or more of the directors, who shall appoint one of their own body president pro tempore, shall constitute a board for the transaction of business. In case of vacancy in the office of president or any director, happening from death, resignation, removal, or disability, such vacancy may be supplied by appointment of the board, or by the proprietors in general meeting.

No. 2—The amendment of charter, passed January 23d, 1835. Sess. Acts 1835, ch. 97, p. 86.

NOTE.—No. 2 not copied in this record by direction of counsel for all the parties.

No. 3—Resolution of the directory of the Richmond, F. & P. R. R. Co., passed December 22, 1834, which is in the words and figures following, to wit:

Resolution.

At a meeting of the president and directors of the Richmond, Fredericksburg and Potomac R. R. Co., on Monday, the 22d of December, 1834:

Present—John A. Lancaster, president, Conway Robinson, Nicholas Mills, and James Bosher, directors.

Whereas by the act incorporating this company it is requisite that the point at which the railroad terminates within the corporation of Richmond should be approved by the common council, and it appears to the board most expedient to conduct the same from the Richmond turnpike along H street to a point at or near the intersection of the said
29 street and 8th street, and for the present to terminate the same by suitable connections with the contemplated warehouses and workshops of the company on lots Nos. 477 and 478, purchased by them from John Heth: Therefore, be it

Resolved, That the approbation of the common council be requested to the above plan.

Resolved, That the president cause a copy of the foregoing resolution to be transmitted to the common council.

Resolved, That the president, if he deem the same advisable, request the engineer to attend the meeting of the hall for the purpose of giving any explanations which may be desired in relation to the plans of the company.

A true copy from the minutes.

J. B. WINSTON, *Secretary.*

No. 4—Original charter of the city of Richmond, enacted May, 1872. Hen. St. at Large, vol. 11, page 47.

No. 5—Amended charter of the city of Richmond, enacted May 24, 1870. Sess. Acts 1869–'70, ch. 101, p. 125.

No. 6—General ordinance of the city council in relation to railroads, adopted October 28th, 1839. Rev. Ordinances of 1839, ch. 24, § 35, p. 195.

NOTE.—Nos. 4, 5, and 6 not copied in this record, by direction of counsel for all parties.

No. 7—Two ordinances of the city counsel in relation to appellants specially, adopted one on the 13th May, the other September 8th, 1873; which ordinances are in the words and figures following, to wit:

An ordinance to regulate the use of Broad street by the Richmond, Fredericksburg and Potomac Railroad Company. Passed May 13th, 1872.

Whereas the twenty-third section of the act of the general assembly of Virginia, incorporating the Richmond, Fredericksburg and Potomac Railroad Company, requires the president and directors thereof so to construct the said railroad across any established road or way as not to impede the passage or transportation of persons or property along the same; and whereas various streets within the corporate limits of Richmond are thus obstructed by said railroad, and the lives of the citizens are imperilled by the passage through one of the principal thoroughfares of the locomotives and trains of said company: Therefore,

1. Be it ordained by the council of the city of Richmond, That no steam-engine, tender, freight car, passenger car, or other car of any kind belonging to or used by the Richmond, Fredericksburg and Potomac Railroad Company shall stand, load, or unload on Broad street, but any such engine, tender, or car shall be carried or propelled immediately into a depot or lot adjoining said street, and there receive or discharge its load of freight or passengers, as the case may be, and if the same be not done or performed on or before the first day of January, 1873, then and thereafter the said railroad company, for any violation of the ordinance, shall be fined not less that five nor more than twenty-five dollars for each and every offence.

2. That the Richmond, Fredericksburg and Potomac Railroad Company shall conform their railroad or railway track to the grade, when established and located, as provided for in an ordinance passed on the 13th day of May, 1872, entitled "An ordinance to provided for the establishment of the grade of Broad street west of Ninth street," from Hancock street to the termination of said railroad or railway track, at the intersection of Broad and Eighth streets; and if the same be not done on or before the 1st day of July, 1873, then the said company shall be

fined twenty dollars per day for every day thereafter until said railroad or railway track shall be made to conform to the grade of said street.

3. That on and after the first day of January, 1874, no car, engine, carriage, or other vehicle of any kind belonging to or used by the Richmond, Fredericksburg *or* Potomac Railroad Company shall be drawn or propelled by steam upon that part of their railroad or railway track on Broad street east of Belvidere street in said city.

A true copy from the original on file in my office.
E. C. HOWARD, *City Clerk.*

An ordinance to amend the third section of an ordinance to regulate the use of Broad street by the Richmond, Fredericksburg and Potomac Railroad Company. Passed September 8th, 1873.

Be it ordained by the council of the city of Richmond, That section three of an ordinance passed May 13th, 1872, entitled "An ordinance to regulate the use of Broad street by the Richmond, Fredericksburg and Potomac Railroad Company," be amended and re-ordained so as to read as follows:

3. That on and after the first day of January, 1874, no car, engine, carriage, or other vehicle of any kind belonging to or used by the Richmond, Fredericksburg and Potomac Railroad Company shall be drawn or propelled by steam upon that part of their railroad or railway track on Broad street east of Belvidere street in said city. The penalty for failing to comply with this section shall be a fine of not less than one hundred nor more than five hundred dollars for each and every offence, to be recovered before the police justice of the city of Richmond.

31 A true copy from the original on file in my office.
E. C. HOWARD, *City Clerk.*

The foregoing amendatory ordinance utterly escaped my memory yesterday when *when* inquiry was made as to such action by the council.
E. C. HOWARD, *City Clerk.*

DECEMBER 19TH, 1873.

No. 8—A printed pamphlet, containing various resolutions, &c., &c., of the city council in relation to appellants, and resolutions and reports of appellant, printed by order of the city council, which is in these words and figures, to wit:

(No. 8.)

Richmond, Fredericksburg and Potomac Railroad Company, their occupation and use of Broad street, as considered and acted on from time to time by the council, &c.

COUNCIL CHAMBER,
Richmond, January 30th, 1871.

To the committee on streets generally:

GENTLEMEN: In obedience to the order expressed in your resolution of 10th January, 1871, I have with much care examined the records of the council, and have thence extracted all matters which I deemed pertinent to your enquiry concerning the relations which have obtained and now subsist between the corporate authorities of the city and the Richmond, Fredericksburg and Potomac Railroad Company, touching the occupation and use of Broad street by that company.

The original memorials, petitions, &c., upon which were based the proceedings of the council upon this whole subject, were lost during the occupation of the chamberlain's office by the military in 1865, immediately after the war, and therefore the precise terms of such cannot now be supplied; but the general report of them is perhaps sufficiently apparent from the action of the council thereon, as shown in the pages accompanying this, and numbered 5 to 38.

Along with the arguments contained in the reports of committees of the council, beginning on page 18, the kindness of the railroad company has enabled me to lay before you their views upon the questions at issue, which seemed necessary to a fair and full examination by the committee of a subject so interesting and important.

In the extracts from proceedings of the council, it appears that the council early admitted, and did not therefore question, that, in this resolution, approving the location of the railroad on H street (page 5)
32 to a point at or near the intersection of said street and Eighth street, was contained or reserved no right of revocation. But by the proviso attached thereto was retained, as they constantly aver, every power and privilege, not necessary to the construction of the railroad and its connection with the company's depot, which the charter had vested in the authorities. Of these was the right, as they insist, to exclude from the city, whenever it was found expedient, the locomotive-engines used by the company; but accompanying the declaration of this right and power will, on each occasion, be found the declaration, by resolution, that its exercise was not then expedient.

The payment by the railroad company of the fine imposed by the mayor on the 2d October, 1837, (pages 6 and 7,) and the applications of the president for the permission for the company's cars to remain on the track, presented to the council the 12th August, 1850, and 12th December, 1853, (page 36,) would seem to admit the reservation of power over the railroad company in the particulars therein involved. In this connection your attention is also called to the "ordinance concerning railroad cars in the city of Richmond, and to regulate the use of railroad cars and other carriages upon the same," passed 28th October, 1839, (see pages 34 and 35,) being the first ordinance passed for these purposes.

Whether considerations can now be adduced to the committee, other than those formerly before the council, to alter the decision then arrived at, that it was inexpedient to prohibit the use of locomotives by the company within the city limits, is one which the papers herewith submitted cannot much effect, and is left to the discriminating judgment of the committee.

Very respectfully, your obedient servant,

E. C. HOWARD, *City Clerk.*

The occupation and use of Broad street by the Richmond, Fredericksburg and Potomac Railroad Company.

In council of the city of Richmond, December 23rd, 1834.

The following preamble and resolution were adopted:

Whereas by a resolution of the president and directors of the Richmond, Fredericksburg and Potomac Railroad Company, submitted to the common council, it appears it is deemed most expedient by the said president and directors to conduct the said railroad from the Richmond turnpike along H street to a point at or near the intersection of the said street and Eighth street, and for the present to terminate the same by suitable connections with the contemplated warehouses and workshops

of the company on lots No. 477 and 478, purchased by them from John Heth:

33 Resolved, That the common council do approve the proposed location of the said railroad and the present termination of the same, as described in the foregoing resolution, and authorize the prosecution of the said work within the limits of the city on the above location, provided that in locating the said railroad no injury shall be done to the water-pipes now laid in and along said street: provided, that the corporation of Richmond shall not be considered as hereby parting with any power or chartered privilege not necessary to the railroad company for constructing the said railroad and connecting the same with the depot of said company within the limits of the city.

MARCH 9TH, 1835.

Mess'rs Scott, Richardson, and Sublett were appointed a committee to bring in "an ordinance for regulating the use of H street by the Richmond, Fredericksburg and Potomac Railroad Company."

MARCH 25TH, 1835.

Ordinance read and laid on the table.

DECEMBER 21ST, 1835.

Ordinance recommitted.

FEBRUARY 18TH, 1836.

William D. Wren appeared before the hall, by permission, as chairman of a committee appointed at a meeting of residents on Shockoe Hill, held on the 28th of January, 1836, relative to the railroad on H street, and presented certain resolutions adopted by the said meeting. Whereupon it was

Resolved, That the resolutions just read be referred to the street commissioners generally, with instructions: 1st, to ascertain what injury has been done to H street by reason of the laying down a railroad on said street, and if there be any injury to report its extent, its character, and the remedy therefor; 2nd, to confer with the president and directors of the Richmond, Fredericksburg and Potomac Railroad Company for the purpose of ascertaining what are to be their future plans and operations, so far as they relate to the travel on said road on H street, and report to this hall what injury will probably result to the citizens resident and owning property on said street by the execution of said plans and operations of said company.

MARCH 30TH, 1836.

Upon the recommendation of the commissioners of streets, to whom the matter has been referred, the council ordered a contract for the paving of Broad street from Eighth street to Brook avenue, one-third of the expense of which was assumed by the railroad company.

34 MAY 22ND, 1837.

A memorial was presented from Duval, Burton & Johnson, representing that they have applied to the railroad company to transport coal from Hungary water-station to the railroad terminus in Richmond, and have reason to expect to obtain the use of the yard between the Swan tavern lot and the company's offices, if the common council will allow it to be connected with the railroad from the present termination by a suitable track, and asking that said railroad company be allowed to make the connection, according to a plan of their principal assistant engineer, or if the company should decline it, that they may be allowed to make the said connection.

Resolved, That the application be granted, and the work to be done under the direction of the commissioners of streets for Madison ward and the city surveyor: provided, that nothing herein contained shall be so construed as to authorize the cars engaged in the transportation of coal to remain or stand on the street so as to obstruct the same, in violation of the existing ordinances of the city.

NOVEMBER 13TH, 1837.

A communication was submitted from the mayor of this city, inclosing his opinion on a summons against the Richmond, Fredericksburg and Potomac Railroad Company for obstructing H street, tried before him on the 2nd October, 1837, together with notes received by him from the president of said company, and referring to his communication in February last respecting the destruction of two houses on H street by the locomotive of that company.

Ordered, That the said communication be referred to the commissioners of streets, with leave to report by ordinance or otherwise.

NOVEMBER 20TH, 1837.

Report presented and laid on table.

NOVEMBER 23D, 1837.

Report taken up and the following substitute adopted:

The mayor having, by his judgment, decided that the complaint made against the Richmond, Fredericksburg and Potomac Railroad Company, in obstructing H street, has been sustained by evidence and is in violation of the ordinances of this city, and having informed the hall that he has, under the circumstances, suspended the execution of the judgment:

Resolved, That we approve of the course pursued by the mayor, in declining for the present to enforce the execution of said judgment, thus affording an opportunity for an amicable arrangement, by which the right of parties may be ascertained; and that to afford the Richmond, Fredericksburg and Potomac Railroad Company time to present some project for such arrangement, the mayor do suspend executing his judgment until the 8th day of January next.

JANUARY 8TH, 1838.

A communication was submitted from the mayor of this city, dated 5th instant, inclosing a letter received by him from the president of the Richmond, Fredericksburg and Potomac Railroad Company, since the adoption of the resolution authorizing a suspension of execution on the judgment against the said company for obstructing H street, and stating that on that day the treasurer of said company had paid to Clement White, a deputy of police, the amount of the judgment.

Ordered, That said communication and accompanying papers be referred to a select committee, with leave to report by ordinance or otherwise.

Committee appointed.

MARCH 30TH, 1838.

Resolved, That John Barr & Co. be authorized to construct a single track railroad from the Richmond, Fredericksburg and Potomac Railroad on H street, under the direction and superintendence of the commissioners of streets for Monroe ward and the city surveyor, to the lot owned by John B. Richardson, provided the cars shall not remain on the track in violation of the ordinances of the city.

AUGUST 8TH, 1838.

Upon petition of Benjamin R. Curtis, a like privilege was granted to run a track from the railroad on H street into the lot obtained by him from James Lyons, on the north side of said street, upon the conditions annexed to that granted John Barr & Co., and the further conditions "that the railway to be constructed shall be made to conform to the level of the street."

A report made October 15th, 1838, upon two memorials from sundry citizens complaining, &c., against Richmond, Fredericksburg and Potomac Railroad Company of certain alleged grievances, was on the 22d of that month recommitted "to the committee who made it:" and with it was referred a communication from the president of said company transmitting a copy of "a report from a committee appointed by the directors of said company on the subject of the use of locomotive steam-engines upon their railroad within the city." Said report is as follows, viz:

At a meeting of the president and directors of the Richmond, Fredericksburg and Potomac Railroad Company, held on Monday, 22d October, 1838, the following report was received:

The committee, to whom was referred a petition of some of the
36 citizens of Richmond, praying the common council to prohibit the use of locomotive engines upon the streets of the city, and a resolution reported to the common council by its committee, declaring it expedient and proper to make such prohibition by ordinance, with instructions to examine into the rights of this company and consider what course it becomes the company to pursue touching the subject, have performed the duty assigned them, and respectfully submit the following report:

The railroad from the Roanoke to Petersburg had been completed and locomotives used upon it for the purpose of transportation at the time of the passage of the act incorporating this company. Their use was contemplated upon this railroad, and the general assembly gave us full power to use them as had been given to the Petersburg Railroad Company. The 24th section of the charter uses this broad language: "The president and directors, or a majority of them, shall have power to purchase with the funds of the company, and place on the railroad constructed by them under this act, all machines, wagons, vehicles, carriages, and teams of any description whatsoever, which they may deem necessary or proper for the purposes of transportation." Undoubtedly by this clause the power was given the president and directors, if they deemed it necessary or proper for the purposes of transportation, to place locomotives on the railroad constructed under the act.

By the first section of the act it was provided that the railroad should be made from some point within the corporation of Richmond, to be approved by the common council, to some point within the corporation of Fredericksburg. If, instead of leaving the point within the corporation to be approved by the common council, the general assembly had itself fixed the point, and provided that the railroad should be made from that point to Fredericksburg, and empowered the president and directors to place on the railroad all machines which they might deem necessary or proper for the purposes of transportation, it is perfectly clear that in such a case the president and directors might have had the transportation done by locomotives from the designated point to Fredericksburg, and when the general assembly, instead of itself fixing the point, leaves the point to be approved by the common council, then so soon as a particular point is approved the effect is exactly the same

as if that particular point had been fixed in the act itself. The railroad is necessarily from the point so approved, and the president and directors have the clear power of transporting from it to Fredericksburg by locomotives.

Such is the state of the case in regard to the power of this company to transport by locomotives from the depot on H street.

At a meeting of the president and directors on the 22nd of December, 1834, a preamble and resolutions were adopted, by which, after reciting that by the act incorporating this company it was requisite that the point at which the railroad was to terminate within the corporation of Richmond should be approved by the common council, it was set forth
37 that it appeared to the board most expedient to conduct the same from the Richmond Turnpike along H street to a point at or near the intersection of the said street and Eighth street, and for the present to terminate the same by suitable connections with the contemplated wherehouses and workshops of the company on lots No. 477 and 478, and the approbation of the common council was requested to this plan.

The point within the corporation proposed by the board was approved by the common council, and the common council accordingly adopted a resolution approving the location of the railroad and the termination of the same as described in the resolution of the board, and authorizing the prosecution of the work within the limits of the city on that location. After this resolution had been adopted, the company, having a clear right to do so, made its railroad from that point within the corporation of Richmond approved by the common council, and erected an extensive depot at that point.

Shortly before the railroad was opened for transportation a meeting was held by some of the residents on Shockoe Hill, at which resolutions were adopted declaring, as the opinion of the meeting, that the railroad company should not be permitted to use locomotive power for propelling their cars within the city; declaring, further, that the railroad company should be required to construct and keep in good order a free and easy access and passing at all points from the one side of H street to the other, and appointing a committee to wait on the common council and communicate to them these resolutions, with the request that they adopt proper and effectual measures for their execution.

The resolutions, being submitted to the common council, were referred to the street commissioners, with instructions: 1st, to ascertain what injury had been done to H street by reason of the laying down a railroad on the street, and if there be any injury to report its extent, its character, and the remedy therefor; 2nd, to confer with the president and directors of the railroad company for the purpose of ascertaining what were to be their future plans and operations, so far as they related to the travel on said road on H street, and to report to the hall what injury would probably result to the citizens resident and owning property on said street by the execution of the plans and operations of the company. This resolution of the common council was laid before the board on the 15th of February, 1836, the day on which the business of transportation was commenced, and in reply thereto the president and directors made the following communication:

"The railroad having been made along H street, from a point approved by the common council, the president and directors, under power given by the act of incorporation, have purchased and placed on the railroad a locomotive engine and other machines proper for the purposes of transportation. Their plan, so far as the same relates to travel on

said road on H street, is to have the cars drawn by a locomotive. It has occurred to them that it might not be prudent for the locomotive to go so fast within the corporation as it will after leaving the city, and accordingly they have adopted a resolution directing their engineer
38 not to suffer the locomotive, while in the city, to proceed at a rate exceeding three miles per hour.

"The president and directors are unable to perceive that any injury will result to the citizens resident and owning property on H street from the execution of the plan of the company. Their road occupies about five feet in the centre of a street 118 feet wide, and there is, of course, a very large space on each side between the railroad and sidewalk. If the street on each side of the railroad be wide enough for the purposes which it is intended to answer, the president and directors have supposed that nothing else could be desired except facilities for crossing the railroad at convenient points. Their engineer has been proceeding to make crossings opposite the cross-streets which have been opened along H street, and it is believed that at these places the street will be in a much better condition than it was before the railroad was made; but the president and directors are perfectly willing that their fellow-citizens on H street should have increased facilities for crossing the railroad, provided they do not seek to make the railroad a common highway. It is very obvious that in a street which is unpaved and extremely muddy, if the track of the railroad was so constructed as to admit of carts crossing it at all points, the road would be apt to be used by carts going up and down in preference to keeping on the street itself, which would be an interference with the rights of the railroad company, injurious to their road, and be productive of danger. While it would be objectionable in these respects to make the railroad passable at all points, it is thought that every facility which is at all desirable for crossing the road may be afforded by means of additional crossings. The president and directors have therefore directed their engineer, after completing the crossings heretofore determined on, to proceed then to construct, as speedily as practicable, one additional crossing of forty feet in width opposite each square on H street from the depot to Jefferson street, such additional crossings to be about the centre of each square."

Upon receiving this answer the commissioners of streets recommended, and the common council adopted, a resolution instructing the commissioners of streets to inquire into the expediency of causing H street to be paved from the eastern side of Eighth street to the western side of Brook avenue, and to ascertain from the president and directors of the railroad company whether they would incur any, and if any what, portion of the expense attending the same. A committee was then appointed on the part of the company to communicate with the commissioners of streets in relation to the subject and make such arrangements as might seem expedient. After a communication from the commissioners of streets to the committee of the company, and from the committee to the commissioners, showing the views on each side, the city surveyor was directed by the commissioners of streets "to prepare and submit a plan, the most judicious to be adopted, for paving H street from Brook avenue to the eastern side of Eighth street, having a regard as well to the just rights and interests of the city as to those of the
39 railroad company in the use of said street." The city surveyor accordingly made a report, from which the following is extracted: "A uniform pavement, on a level with the top of the plates of the railroad, while it would place the street in good condition for crossing at all points, would subject the use of the railroad to inconveniences.

Amongst these the following have presented themselves most forcibly to my mind: 1st, that being the highest point of the street, might and probably would be travelled upon longitudinally, or in the direction of its length; 2d, according to the plan, the grooves for the flanges of the wheels having no outlet for the escape of the earth, gravel, or snow that would be constantly accumulating, and (much of it carried there by the travel mentioned above) would produce serious inconveniences; 3d, that if the street were so improved as to render it easily passable on the track in the direction of its length, it would subject carriages to continual accident by getting their wheels into the grooves; and, furthermore, by its affording facilities for foot-passengers or horsemen it would increase the chances for accidents. On the other hand, facilities for a free passage at all points, from one side of the street to the other, appear to be, in the abstract at least, the right of the citizens. With these views I submit, as a compromise of interests, the accompanying plan: According to this plan H street, on each side of the track, will be paved up to the rail, the space between the rails will be paved with an elevation or crowning of from two to two and a half inches; the sills will not be paved but left a little below the level of the pavement, say from three to four inches; the rails will be elevated on the outer side from two to three inches, and although they will be higher on the inside of the track, the crowning of that portion will receive the wheels at a less distance than two or three inches. Thus the street may be crossed at all points by foot-passengers, horsemen, and carriages of every description, while the continued interruption from the sills, &c., will exclude it from general travel lengthwise. The crossing at the cross-streets will be upon the plan now used, level with the plates, and while the street may be crossed at any point on this plan, inducements will thus be held out to use the cross streets as crossings." The commissioners of streets unanimously approved the plan thus submitted by the city surveyor, and the committee of the railroad company were thereupon informed that the commissioners of streets would recommend to the common hall the execution of the work, provided the railroad company would pay one-third of the expense of executing the same, including the cost of the curbstone; deducting therefrom the price of all the curbstones, graduation, and other paving already done on H and Eighth streets by the company. The railroad company, in reply, stated that in their opinion the railroad company was asked to bear a larger portion of the expense than was reasonable, but they had come to the conclusion to yield their assent, and it was given accordingly. Thereupon the commissioners of streets made a report, stating that having considered the importance of the work, the advantageous terms upon which it was understood it could be effected, and the very liberal proposition of the railroad company, they unanimously recommended to the common council to cause the work to be executed agreeably to the plan submitted by the city surveyor, and that the proposition of the railroad company should be accepted. This report was adopted by the common council on the 20th March, 1836, and this company thereupon rescinded its resolution directing additional crossings to be made between the cross-streets.

In the mean time, while these proceedings were going on between the common council and the commissioners of streets on the one hand, and the railroad and its committees on the other, the locomotives were running daily on H street. The commissioners of streets, therefore, acted not only with full knowledge of the ground on which the right of the railroad company to run locomotives rested under its charter, but with

full evidence of the actual effects produced by the running; with both this knowledge and this evidence it was very distinctly understood in the interviews which took place between the commissioners of streets and the committee of the railroad company that upon this company's agreeing to pay the third which it was asked to pay of the expenses of paving, there would be an end to all actions upon the resolutions adopted at the meeting of residents on Shockoe Hill.

The third which this company undertook to pay amounts to nearly $7,000. It has been paid in part, but for the principal portion bonds were given according to the contract, which have not yet become payable. The street, which was formerly remarkable for having the deepest mud in winter and the deepest dust in summer, is now handsomely paved. The increased amount of business, and the paving of the street, have together made stores more in demand, a decided improvement is perceptible, both in the buildings and in the nature of the stores. And the owners of property generally upon the street, and especially near the depot, find their property rising in value and the income from it increasing. These are benefits, all of which have arisen in a greater or less degree from the construction of the railroad.

Under such circumstances it would be a matter of surprise that the petition presented to the common council should have received some of the signatures which are found to it were it not well known that signatures to a petition are generally obtained with great facility. Persons often in a hurried manner unite in applications, from which, upon better examination and more reflection, they would prefer to recede.

That there are persons who would be pleased to see the depot moved from its present location to the head of H street, so as to be contiguous to that property, and add to its value, is not doubted. That there are others who would be pleased to see a change in the direction of the railroad before it gets to the corporation, and a turn given to it down the valley towards the market-house, is believed to be equally true. But that any can seriously say "that by reason of the noise and smoke,
41 and other causes of disturbance incident to the introduction of these engines, the value of property on the streets through which they are permitted to pass has been much impaired," we cannot readily believe.

Take, for example, the property on H street nearest the depot, and therefore most exposed to all the disturbance incident to the locomotives. It is perfectly well known that property thus situated cannot be purchased for what it could have been purchased before the railroad was made; some of it, on the contrary, has nearly doubled in value.

The history of the past affords but little warrant also for the opinion "that the introduction and use of these engines in the town are dangerous to personal safety, dangerous to horses and carriages, and will at some period produce conflagration of houses in the city." It is true that about eighteen months ago, upon a dark night in winter, two horses came in contact with the locomotive, and under the peculiar circumstances of the case the company paid to the owner their value. But with this single exception there has not resulted from the use of locomotives in the city, during the two years and eight months that they have been running, any injury either to persons or property. On two occasions boys attempted to climb upon the cars, and falling down were hurt by the car-wheels; but this injury would equally have resulted had the cars been drawn by horses. The locomotive has injured no one, and set fire to no house. The width of the street is itself great security against any damage of the latter kind.

If, in truth, the inconvenience were greater than it really is, we might say, as an English court has already said in a case somewhat similar in its nature, that "the words of the act clearly give to the company the unqualified authority to use the engines;" and "there is nothing unreasonable or inconsistent in supposing that the legislature intended that the part of the public which should use the highway should sustain some inconvenience for the sake of the greater good to be obtained by other parts of the public in the more speedy travelling and conveyance of merchandise along the railroad." At present neither the traveller nor the person who has produce or goods transported pays anything for transportation from the head of H street to the depot. The charge which they would have to incur, in case the locomotives should not come into the city and the depot were changed to the head of H street, would be found to be quite considerable.

The information "that in the city of Baltimore the use of locomotive engines in the streets was at one time permitted, and that the chancellor of the State afterwards prohibited their use," is incorrect.

The Baltimore and Ohio Railroad passes in Baltimore through a street very narrow, considering the business upon it, and over ground not well adapted to locomotives. The transportation in the city never has been done by locomotives, and therefore no case can have gone before the chancellor upon any such ground.

The petitioners are equally incorrect in supposing "that Richmond is the only city within the United States in which the use of loco-
42 motive engines is permitted." The legislation of Pennsylvania furnishes an instance to the contrary of so striking a nature that it is deemed proper here to mention it. By a law of that State, passed in 1828, the canal commissioners were authorized to locate a railroad from the city of Philadelphia through the city of Lancaster to Columbia, on the Susquehanna, and from thence to the west end of the borough of York, in the county of York; and the law provided that if the canal commissioners should deem it expedient to locate the railroad north of a particular street the corporation of Lancaster should have the privilege of intersecting it by a lateral railroad through the city. A location being made in the direction indicated by the proviso, the citizens complained of it, whereupon the legislature of Pennsylvania adopted a resolution instructing the canal commissioners to take measures to have a survey made for the purpose of ascertaining the practicability of changing the location of the railroad, "so that it might pass through the city of Lancaster as far within the business part of the city as the graduation would admit," provided the corporation would first engage to pay the expenses of the resurvey. After this resurvey a resolution was adopted authorizing a change of the location so that the railroad should pass through the city of Lancaster upon condition that the corporation should bind itself to pay all damages caused by the change of the location, which damages were directed to be assessed. These two resolutions may be seen amongst the laws of Pennsylvania, passed the session of 1831–'32, pages 623 and 640. The corporation assenting to the terms, the road was made accordingly, and the locomotives "pass through the city of Lancaster as far within the business parts of the city as the graduation will admit."

If this company were now to change the location of its depot, place it at the head of H street, and leave those who travel on the railroad or have property transported on it to encounter themselves the whole expense of carriage within the corporation, it is believed that in less than a twelvemonth there would be a much greater desire to get the de-

pot back where it is than exists at present to prevent locomotives coming in the city. This company ought not, however, to be thus fickle in its course. The right given by its charter, the expense which it encountered in building and fitting up its depot, after the hall approved the termination, and the understanding at the time this company agreed to bear so large a share of the expense of paving H street, combined together, create rights which cannot lawfully be diverted. Upon the present occasion it is deemed sufficient to make known the nature of those rights to the common council and to our fellow-citizens.

Whereupon the said report is approved, and it is ordered that a copy thereof be transmitted to the common council, and the same be published in the newspapers of this city.

And then the board adjourned.

(Signed) CON. ROBINSON, *Pres't.*

43 In a report of their special committee, adopted by the railroad company the 1st November, 1838, upon the subject of the limitation by the council to one hour of the time during which any machine or vehicle may remain stationary on a rail-track within the streets, and upon the memorial on which said limitation was founded, the railway company argue that as it is their duty "upon the payment or tender of the tolls allowed, to transport to any convenient place of delivery on the road which the owner of the goods may indicate, and there to deliver," &c., and as Mess'rs Duval, Burton & Johnson and Mess'rs John Barr & Co. had been specially privileged by the council to arrange for such convenient places of delivery for coal, and Mr. Benjamin R. Curtis to arrange in like manner for the delivery of wood and lumber, that the railroad company ought not to be held responsible for the cars remaining too long at those points, as the delay arose from the necessities of the case, the dealers being unable immediately to transfer to their yards the supplies of the articles specified in quantities answerable to the public demand.

The said report was presented to the common council and laid on the table.

NOVEMBER THE 12TH, 1838.

On which day, also, M'r Mayo presented a report signed by himself and M'r Heath, a majority of committee. Laid on table.

NOVEMBER 26TH, 1838.

Minority report submitted by M'r Munford as a substitute, and 100 copies ordered of report and substitute, together with the memorials and the communications from the Richmond, Fredericksburg and Potomac Railroad Company, relative to use of locomotive engines within the city.

JANUARY 21ST, 1839.

The following report and the substitute proposed therefor were taken up:

The committee to whom were recommitted the report and resolutions respecting the exclusion of locomotive engines from the limits of the city, and providing for the removal of certain obstructions in the streets, have again considered the same in connection with the long and elaborate communication from the president and directors of the Richmond, Fredericksburg and Potomac Railroad Company on the subject of their rights and powers generally, and especially in reference to the introduction of locomotive engines within the city. This document has re-

ceived the careful and impartial attention of the committee, as well on account of the respectable source from which it proceeds as the really important principles which it involves. It cannot have escaped observation, however, that the document itself is not in the shape of a remonstrance against the action of the hall upon the subject to
44 which it refers; it is not in the nature of a conciliatory proposition from one of two contending parties, designed for the peaceable adjustment of points of difference between them; but, on the contrary, is of the character of a final declaration of rights, as maintained by one party only, and a defiance of all and every one who may presume to entertain different opinions. In this view of the subject it is doubly important that the city authorities and the citizens at large should pause and look into their own rights as conferred by charter; should examine carefully whether there be another authority within our limits greater than our own, and whether in all time to come and in every condition of things, it is to be admitted that serious evils and inconveniences may arise to our persons and property for which there can be no possible redress. This enquiry is rendered still more necessary now as there are no other incorporated companies exercising their powers within our limits, with which we may sometimes come into unavoidable collision; others will no doubt spring up as the wealth and population of the city shall increase; and as it is natural for all associations to seek to extend their privileges, every repeated encroachment, if unresisted, will acquire the force of precedent; the sympathies of the citizens will in time be absorbed by the more interested feelings of the stockholder, until finally the authority of the corporation itself will cease to be respected.

We think the question whether the steam-engines of the railroad company shall be excluded now, or twelve months hence, or even in five years, as altogether an unimportant one when compared with the question of power. In the ordinary course of things, if Richmond continues to prosper, H street, the most spacious and beautiful in its limits, will be lined with lofty buildings and traversed by a numerous population. If the number of engines in use upon that street should, in that state of things, continue to multiply as rapidly as they have done since the company commenced operations, can any reasonable man be blind to the fact that great and serious mischief, both to persons and property, might be the inevitable consequence? Hence the importance of ascertaining now whether the right to their use is absolutely and uncontrollably vested in the railroad company. We shall be obliged, in our exposition of the true state of the case in regard to the question of power, to differ materially from the president and directors. In their history of the case they have kept out of view a leading and important fact, upon which the whole controversy may be said to depend, and they have assumed a position, for the sake of argument, which supposes that the legislature of the State could be guilty of a gross outrage upon our corporate and municipal rights. They have supposed that the legislature might have designated the point within the city where the railroad should terminate, without consulting the common council. We think that the legislature could exercise no such power. Without discussing the question whether that body, in mere wantonness and extravagance, could legitimately disfranchise the city and subject it to a county-court administration and to the general laws of the State, we
45 deny that it could recall our chartered rights by piecemeal, or authorize a private company to violate and trample upon those rights at pleasure. We do not think it necessary either to discuss the

question whether, if the legislature had designated the point of termination without the sanction of the hall, that designation would in any respect have impaired the rights of the city or diminished its just control over the streets and highways. That question can be reserved until the legislature shall actually attempt so strange an innovation. In the case before us that body acted with more wisdom and moderation, and required that the point of termination should be approved by the common council. If the common council had not approved, it certainly will not be contended that the railroad company could have *instructed* their works within the limits of the corporation, and it must therefore be conceded that as it was optional either to approve or disapprove—to consent or refuse—it follows as a necessary consequence that it was competent for the hall to prescribe the terms and conditions upon which its assent should be given. That body would have been unfaithful to its trust if it had not carefully provided against any injurious effects which might have followed a new and untried experiment. They did so provide, and this the following proceedings, copied from the journal of the hall, will show:

IN COMMON COUNCIL, *23d December*, 1834.

Whereas by a resolution of the president and directors of the Richmond, Fredericksburg and Potomac Railroad Company, submitted to the common council, it appears that it is deemed most expedient by the said president and directors to conduct the said railroad from the Richmond turnpike, along H street, to a point at or near the intersection of said street and Eighth street, and for the present to terminate the same by suitable connections with the contemplated warehouses and workshops of the company on lots Nos. 477 and 478, purchased by them from John Heth:

Resolved, That the common council do approve the proposed location of the said railroad and the present termination of the same, as described in the foregoing resolution, and authorize the prosecution of the said work within the limits of the city on the above location; provided, that in locating the said railroad no injury shall be done to the water-pipes now laid in and along said street; provided, also, that the corporation of Richmond shall not be considered as hereby parting with any power or chartered privilege not necessary to the railroad company for constructing the said railroad and connecting the same with the depot o said company within the limits of the city.

We ask if it is possible for language to be plainer? Here is an express and positive reservation of all our chartered rights, including an absolute and entire control over the streets of the city, excepting
46 only the privilege to the railroad company of constructing and connecting their road with the depot on H street. Not a syllable is recorded about the mode or manner of transportation, whether by horse-power or steam, the entire regulation of that subject being reserved to the corporation with the rest of its chartered powers. And here, if it were proper or necessary to follow the example of the railroad company by referring to verbal understandings, explanations and interview, it would be very easy to prove that the qualified assent of the hall was in part designed to provide against the subsequent use of locomotives, if upon experience they should be found to be hurtful.

But we have not yet done with the question of power. The railroad company, in their ingenious proclamation, maintain that as the 24th section of their charter gives them the power to purchase and place upon their road all machines, vehicles, &c., of any description whatsoever

which they may deem necessary, and as the common council have assented to the construction and termination of their road on H street, therefore by the combined operation of the charter, and the resolution of the hall, they have acquired the right to run locomotives within the limits of the city. This reasoning, however, is too defective and illogical not to be perceived by the plainest understanding. It would not have been sound reasoning, even if the assent of the hall had been absolute and unconditional; but when, as we have shown above, the assent was coupled with an express saving of the power claimed by the company, it would be a waste of words to demonstrate its entire fallacy. The truth of the matter is that the rights and powers of the railroad company over their works in the country are in many respects totally unlike those which they can exercise within the city, as we shall presently show from the charter itself, as well as from undeniable facts. The legislature did not require the counties of Spotsylvania, Carolina, Hanover, and Henrico, through which the road passes, to give their assent to its construction, because those counties have no chartered rights or civil privileges, except what are derived from the constitution and general laws of the State. The company, moreover, have not only acquired a right of way, but an absolute right of property also in their road and works in those counties, because as empowered by their charter they condemned the lands of individuals for their purposes, and paid them an equivalent in money. But how stands the case with the corporation of Richmond? The legislature did require the assent of the city authorities before the company could lawfully pass its boundaries; and we contend that after having so passed, all the right which they acquired was a right of way for the transportation of passengers and produce. They obtained no property in the soil, and they paid no equivalent in money even for the use of the street. We are aware that in a controversy or correspondence with the mayor of this city in the fall of 1837, respecting certain obstructions near the depot on H street, the president of the railroad company maintained, what we consider the inadmissable doctrine, that the track of the railway on H street was the
47 property of the company, and that by consequence no obstruction existing thereon could be prevented or removed by the corporate authorities. This doctrine, though denied and overruled by the chief magistrate of the city, was deduced from the same sources which have been resorted to to justify the absolute right of the company to use locomotives, and springs from the palpable error of applying the general provisions of the railroad charter, which are applicable only to the country, to a totally different condition of things as they exist in town. If, for example, the same exclusive right of occupying the track of the railway exists in the city which does in the country, a line of cars might be placed in close connection from the depot to the head of H street, and the free passage of every cross or intersecting street would be inevitably blocked up and obstructed in defiance of the city ordinances. It is true that the president of the railroad company, in his correspondence with the mayor above referred to, states that directions had been given to the company's officers not to obstruct the cross-streets, but it is a remarkable fact these directions do not appear to have been given in obedience to the laws of the corporation, but in compliance with a forced construction of the 23d section of the railroad charter, which is totally inapplicable to the subject. That section, from its very terms, is exclusively applicable to the country. Not only are streets not named in it or alluded to, but it authorizes the company, at their pleasure, to change the direction of all such roads and highways intersecting their own—a

power which, applied to the cross-streets of the city, the legislature itself could not exercise, much less indeed a private corporation.

Again, if the operations of the company are as powerful and irresistible in town as they are in the country, what is there to hinder them from driving their cars on H street at a rate of velocity equal to fifteen or twenty miles an hour? We know no clause in the charter which regulates the speed of their engines; and although it appears from the communication of the president and directors that orders have been given to their agents not to exceed three miles an hour, we owe this security from danger not to the fear of any existing city ordinance, or any which may be passed hereafter, but entirely to the favor and indulgence of the company.

If the company possess the same control over their road in the city which they do in the country, (for this is the essence of the argument derived from the 24th section of the charter,) then we can show from the charter itself that they have it in their power to take entire and exclusive possession of H street. The 7th section of the act of incorporation authorizes the company to lay down as many sets of tracks as they may deem necessary, and also to construct railroads in any direction whatsoever. Does this formidable power apply to the city? If it does, it certainly was not anticipated by the citizens at large, or the city authorities; but is equally true that, unless the city in its compact with the railroad company has reserved its chartered and municipal rights,
or if the doctrines contended for by the president and directors
48 be true, it unquestionably follows that the whole of H street does
in effect belong to the railroad company.

Having, as we think, clearly shown that the corporation, in permitting the railroad company to enter Richmond, parted with none of its vested and municipal rights, and that the pretentions of that company, if acquiesced in, would be utterly subversive of those rights, it remains for us to show that the other grounds upon which the company rests its absolute claim to the use of locomotive power are equally untenable and unfounded.

We confess we have seen, with much surprise, in the communication of the president and directors the effort made to convince the public that the question as to the use of locomotive power was finally settled by the proceedings of the commissioners of streets and the common council, subsequent to the resolutions adopted at a meeting of the citizens held at the Shockoe Hill tavern on the 28th January, 1836. The impression abroad has certainly been made by that document that in consequence of those proceedings the city authorities have relinquished, by way of compromise, all power or intention to prevent the introduction of steam-engines. The president and directors do not, it is true, say so in express terms, because they could not, as honorable men, venture an assertion unsupported by evidence; but they certainly do arrive at that conclusion by a train of reasoning deduced from circumstances. This conclusion we undertake to say, however, is not warranted by the history of the case. We cannot, indeed, presume to know what took place or what pledges were made in the various interviews and consultations which were had from time to time between the railroad committee and the commissioners of streets. We do know, however, that there is not one syllable on the records of the common council (which can alone speak the will of the corporation) to justify the conclusion: and we do most earnestly protest against the doctrine that the corporate rights of the city can be frittered away by verbal understandings and out-door pledges. It is very true the citizens who assembled at the

Shockoe Hill tavern did, by one of their resolutions, give it as their opinion that the railroad company should not be permitted to use locomotive power within the limits of the corporation; but it is perfectly notorious that the principal grievance complained of by them, and which was the subject of their second resolution, was that by the manner in which the company had laid down its rails in the then unpaved condition of the street, "free and easy access and passway at all points, from one side of the street to the other, for all persons, their carriages and other vehicles," had been effectually debarred. It is true, also, that the hall, in acting on these resolutions, instructed the commissioners of streets to enquire generally into the grievances complained of, and what the future plans and operations of the company would be in respect to the travel on H street; and that the company stated in reply that the then existing as well as future agent to be employed in transportation was steam-power. But with the exception of this brief question and
49 answer, no subsequent allusion appears to have been made to the subject of locomotives. The inconvenient location of the rails and the paving of H street constituted the chief topic of conference between the company and the street commissioners, and the only report which the latter made to the hall was a resolution proposing an enquiry into the expediency of paving that street. It was upon this latter subject that the city surveyor submitted his plan for paving the street, without even hinting or alluding to the use of locomotives, and the hall acquiesced in his report, preserving the same silence in respect to the question of power or the expediency of permitting that method of transportation. What possible connection had the paving of H street with the use of locomotives? It had, indeed, much to do with the other subject, to wit, the insupportable condition in which that street was left after the location of the railway; and it is hazarding not too much to say that if the paving had not been authorized, the opposition to the whole improvement would have been overwhelming and irresistible. It is true that the railroad company agreed to pay one-third of the expense of paving; and had they no inducement to do so, apart from the privilege of using steam-power, was there no inducement in the opportunity of appeasing public discontent? Was there none in the greater facilities afforded for their own operations? None in the fact that the improvement would not have been required at all if their railway had not been constructed, by which the city would have been saved a large expenditure of money?

We have thus shown conclusively that the hall never has parted with the power to exclude locomotive-engines, should it be deemed at any time expedient to do so. As to the great expense incurred by the railroad company in constructing their road and erecting their depot and workshops on H street, that has no connection whatever with the subject. They acknowledged themselves that their property on H street was purchased before permission was ever obtained from the common council to enter the city. Would they have abandoned that property and erected their depot without the corporation limits if the use of steam-power had been originally denied them? We think not.

As little also have the general benefits derived by the city from the railroad to do with the question under consideration. If the rise of property on H street, supposing that rise to have taken place, is to be ascribed to the railway, which we very much question, does it follow that the same enhancement in value would not have been produced by the use of horse-power as well as steam? No one has ever dreamed of excluding the company's cars from the city, or breaking up their depot

upon H street, because it is agreed on all hands that the power to do so has been surrendered. The objections urged have been, not to the transportation itself, but to the mode of transportation, and the recent memorial presented to the hall on that subject, and referred to us, is, in our opinion, entitled to great respect and consideration. The memorialists state what we think cannot be controverted, to wit, that
50 the use of steam-engines in the city "is dangerous to personal safety, dangerous to horses and carriages, and will at some period produce conflagration of houses." If these evils are apprehended now, when H street is comparatively thinly built and inhabited, what may not be feared when its improvements become extensive and its population numerous? What may not be justly apprehended, when, as the business of the railroad shall advance with the prosperity of the city, the number of arrivals and departures—already now, we believe, from ten to sixteen daily—shall increase to thirty or forty? The memorialists also state, and we think truly, that "Richmond is the only city in the United States in which the use of locomotives on the street is permitted," nor can we agree with the railroad company that the town of Lancaster, in Pennsylvania, is any exception from the truth of that general statement. It is personally known to one of the committee that the railway from Philadelphia to the Susquehanna passes along the skirts of Lancaster, and does not penetrate the town itself.

We have also attentively considered the other memorial referred to us, which complains, and we think justly, "of the almost perpetual obstruction of the street by the transportation of cars." This monopoly, so inconvenient to many of the inhabitants, and so entirely destructive of the value and beauty of the finest avenue in the city, was certainly never contemplated or expected when the company commenced operations. It never was designed by the city authorities that the street in front of the depot should itself be converted into a depot; and we venture to affirm, if such an effect had been anticipated when permission was obtained to enter the city, that permission never would have been given. The continued determination of the company to occupy the space between their rails not only with the cars, but with iron, lumber, and other articles, has, as we before remarked, grown out of the palpably erroneous doctrine, overruled by the mayor of the city, that they have an absolute fee-simple right to that portion of the soil. Against this doctrine we do most earnestly and deliberately protest. They have acquired no property in the street either by legislative grant, by consent of the hall, or by purchase or condemnation. The common council had no authority to bestow such right, and all that the company can justly and legally claim is the privilege of simple transit from the corporation line to their depot and workshops.

The memorial also complains of the lateral railways constructed on H street. In regard to the question how far the hall could legally authorize them, there is some difference of opinion among the committee, and we should prefer its being settled, if it can be, by judicial decision. Public inconveniences may grow out of the use of those tracks which were not anticipated; but we believe permission was given to construct them under the full persuasion that their public usefulness would outweigh any temporary or partial evil which might result. We can only express the belief and hope that the terms and conditions upon which those grants are made will be rigidly enforced by the proper officers.
51 We are no enemies of the railroad, but, on the contrary, shall heartily rejoice at the success of that as well as all other improvements in our city and State. So long, however, as we are legislative

guardians of the corporation, it is our solemn duty to watch over and defend it from invasion. Neither do we, nor could we, impute to the present upright and intelligent directory of that company wilful or improper designs against the right of the city. They have boldly and honestly expressed their views, from which we as boldly and honestly dissent. The common council and the citizens must decide between us.

We recommend the adoption of the following resolutions:

1. Resolved, That in approving the location and termination of the Richmond, Fredericksburg and Potomac Railroad within the limits of this city, the common council did expressly provide that the corporation should not be considered as thereby parting with any power or chartered privilege which was not necessary to the railroad company for constructing its road and connecting the same with their depot on H street.

2. Resolved, That the right to use locomotive power for transportation had no necessary connection with the right to construct the railroad within the limits of the city, or to connect it with the company's depot on H street; and that if at any time the introduction of steam-engines should be considered as dangerous to the personal safety or property of the citizens, the right of the corporation to prohibit them has not been yielded or relinquished, either in the original resolution approving the location and termination of the railroad, or by any subsequent arrangement recognized by the common council.

3. Resolved, That the railroad company have no right of property in the soil included between the rails of their track on H street, nor have they any right permanently to occupy the said track in violation of the city ordinances, or any other right in reference thereto but that of way or transit for their passengers and produce to their depot on H street, and of preserving and repairing the same when necessary.

4. Resolved, That it is expedient to prohibit, by ordinance, the introduction of locomotive steam-engines within the limits of the city upon the Richmond, Fredericksburg and Potomac Railroad but that the said ordinance should not take effect until the expiration of six months from the passage thereof.

5. Resolved, That it is expedient to prohibit, by ordinance, any machine, engine, wagon, vehicle, or carriage of kind whatsoever, placed or to be placed upon any railroad or railway, or upon any street within the limits of the city, from remaining stationary upon any such railway or street longer than is necessary for the delivery and discharge of the freight or contents thereof.

6. Resolved, That it is expedient to prohibit, by ordinance, any wagon, car, carriage, or other vehicle of any description whatever, from being drawn or propelled upon any railway or street within the city at a rate of velocity exceeding three miles per hour, and that it is also expedient to prohibit, in like manner, all such wagons, cars, car-
52 riages, or other vehicles from remaining for a space exceeding upon any railway or street opposite to any cross or intersecting street.

The substitute, which was proposed by Mr. Munford to the foregoing report, is as follows, viz:

The common council have deliberately considered the memorial of sundry citizens respecting the use of locomotive-engines within the limits of the city, and the report of a committee of the Richmond, Fredericksburg and Potomac Railroad Company upon the same subject. The citizens assert the right of the corporation to prohibit the use of these engines in the streets, and request the common council to exercise it. The company claims the right to employ steam-power in the trans-

portation of passengers and produce along H street, to and from their depot. Does the charter of the city confer upon the common council the power sought to be exercised?

The railroad company maintain that by their charter they are authorized to construct a railroad "from some point within the corporation of Richmond, to be approved by the common council, to some point within the corporation of Fredericksburg," and that, having obtained such approval, they have now the right to all the powers granted them by their charter. They show that their charter invests them "with all the rights and powers necessary for the construction, repair, and maintenance of the railroad, to be located as aforesaid, with as many sets of tracks as they, or a majority of them, may deem necessary;" and they contend that the use of locomotive power is essential in properly maintaining their road, and to enable them fully to secure the benefits resulting to themselves and the community from their charter. They further show that they are invested with power "to purchase with the funds of the company and place on their railroad all machines, wagons, vehicles, carriages, and teams of any description whatever, which they may deem necessary or proper for the purposes of transportation;" and contend that when the common council gave their approval, if they wished to prohibit the use of any particular machine, it was incumbent upon them to have annexed this condition to the grant, and having [fa]iled to do so, they lost all control over the subject, and cannot now [pro]hibit the use of such machine without an usurpation of power, the [exer]cise of which is in direct conflict with the chartered rights of the [comp]any.

[By] the charter of the city, the corporate authorities are invested with [power] "to make and establish such by laws, rules, and ordinances not [contrary] to the constitution or laws of the commonwealth, as shall by [them be t]hought necessary for the good ordering and government of su[ch person]s as shall from time to time reside within the limits of said city [and cor]poration, or shall be concerned in interest therein." Under the t[erm orde]ring, it is conceived that the common council have the undou[bted rig]ht of so regulating, systemizing, commanding, and disposing of [matters c]oncerning the persons and property of the citizens as to result in [the counci]l of the community, passing such laws as they
53 may deem necessary for the good regulation of all persons "concerned in interest in the city." From the term government is derived the right of direction, control, restraint, and the exercise of authority over the conduct and property of the members of the community; the power to establish a system by which the rights and duties of citizens and officers are prescribed and defined; the power to restrain and prohibit what may be determined, and to ordain what may be beneficial, and, as a necessary consequence, the right to judge of the measure of redress and the means of effecting such ends.

The only restraint to this power is, that the ordinances so passed must be in accordance with the constitution and laws of the land. Under this right to make laws for the good ordering and government of the conduct and property of the community, the common council have, without controversy, exercised various powers. They have prohibited horse-racing within the limits of the corporation as contrary to good order and dangerous to the citizens. They have restrained rabid or dangerous animals from running at large; they have prohibited the flying of kites, because they are calculated to frighten horses, and thereby to jeopard the lives of citizens; they have the right to prohibit the assension of balloons inflated by burning spirits as dangerous to property, and have frequently exercised similar powers. If this be true,

they have the like power to prohibit and restrain the introduction and use of dangerous and inconvenient machines and engines.

They have further exercised the right of limiting the size of carts, providing the quantum of loads, &c., and won'd have the same power to prohibit the use of engines or cars of immoderate size. They would have the undoubted right to prohibit the use in the streets of the ancient war chariots armed with scythes, and, in like manner, of any engine which might be dangerous to life or limb, or injurious to property.

The charter of the city of Richmond was in existence at the time the charter of the railroad company was granted, and cannot be repealed by any clause in the latter. If, then, the corporate authorities possessed the right to exclude machines or engines prior to the incorporation of the railroad company, unless they have been divested of that right, it must still remain. The charter of the railroad company gives them the power to construct their railroad from some point within the corporation of Richmond, to be approved by the common council, to some point in Fredericksburg. The company selected that point in Richmond, and asked the common council to approve the same. The common council granted their approval, but with this reservation: "That the corporation of Richmond shall not be considered as hereby parting with any power or chartered privilege not necessary to the railroad company for constructing the said railroad, and connecting the same with the depot of the said company within the limits of the city.

At the time the approval was granted the corporate authorities knew that the charter of the railroad company authorized them to come into the city, to maintain their road, and to use machines; but they also
54 knew that their own charter authorized them to make laws for the good ordering and government of all such matters, for the direction and control over this or any other company, and for the proper restraint of persons, animals, and machines; and knowing all this, they refused to part with any of their powers or chartered privileges, and thereby retained all the rights granted to them. They only parted with such powers as were necessary for constructing the railroad and connecting it with the depot. If it had been necessary to use engines of any description in removing impediments to the construction of the road the company would have possessed the power under this provision to have used them; but after the road was constructed it cannot be said that engines employed in transportation merely are necessary for its construction. The deliberate opinion of the common council, therefore, is that the charter of the city confers upon them the right to exclude the use of locomotive-engines from the streets of the city if they think proper, and that they have never parted with or divested themselves of the power to do so.

But while the common council asserts, and will maintain, their right over this matter, the inexpediency of enforcing that right at this time is another question.

The common council are well aware of the numerous inconveniences and dangers resulting from the use of these engines in H street, and have paid due attention to the complaints of the citizens, but they think it would be unwise to impose restraints upon enterprise in works of internal improvement, promoting the prosperity of the city, and of the State at large. The Richmond and Fredericksburg Railroad Company have undertaken, with true public spirit, a great work, requiring the investment of a large capital, amounting to a million of dollars, which work, it is confidently believed, will so facilitate travel and the transportation of produce as greatly to enhance the value of property and

promote the growth of the city. They have prosecuted this work with industry and expedition heretofore unknown in the annals of our public works; they have encountered immense expense in providing permanent workshops at their depot, and in purchasing steam-engines to carry on their transportation with speed and efficiency; they have assisted the corporate authorities in paving H street by paying one-third of the cost thereof, amounting to near seven thousand dollars, and after encountering and surmounting every difficulty have, as yet, realized little or no profit—their dividends having been small, and no portion of their capital being yet redeemed. Hitherto the principal benefit has been to the community—little or none to themselves. Were the common council now to exclude locomotives from the street, it would necessarily compel the company to purchase other property without the corporation, to provide horses and drivers, with all their attendant expenses, and to keep them, in addition to an expensive steam-power, already amply sufficient for every purpose. It would subject the travel and trade to the annoyance of delay within a half mile of the depot, and the
55 public at large and the company to inconveniences more burdensome than those to which a few, comparatively speaking, are now subjected.

But if, instead of encountering these additional expenses, the company should remove their depot, then the community would not only be annoyed by delay but be burdened with an onerous tax of hack-hire and porterage, for transporting themselves and their produce from the corporation line, instead of being as at present conveniently deposited within the heart of the city.

The common council perceive that most of the complaints made against the company are founded on facts which, in reality, prove how beneficial the road is to the community generally. It is said that the street is incumbered with cars burdened with produce, with coal and lumber and plaster, and every species of commodity. The common council would consider it a public blessing if all the streets in the city could be equally burdened; they would consider it as the realization of the brightest hopes of the most ardent friends of internal improvement; they would look upon it as the source from whence the city was to spring into importance, and to assume the station among the cities of the Union to which her position so justly entitles her. Some inconveniences must result from a great business pursued with activity. The same amount of produce brought in wagons would incumber the street as much, if not more, than in the cars, and the inconveniences attending the loading and unloading of wagons could not be less.

Upon an impartial consideration of the subject, therefore, the common council consider it inexpedient at this time to exclude the locomotives from the street. If, after the company have been somewhat remunerated by the profits of their work for the great expense and hazard they have encountered, and, after the city shall have become populous, and the streets closely built up, it be thought proper to exercise the right possessed by the corporate authorities, the common council would not hesitate to exert their power; but, at present, they think justice to the company, and a due respect to the interests of the community at large, require them to suspend its exercise.

1. Resolved, therefore, that the common council possess, and have never yielded or relinquished the right, to prohibit the introduction of steam-engines into the city.

2. Resolved, that the railroad company have no right, in violation of the city ordinances, permanently to occupy the track on their road

within the corporation; nor have they any other right in reference thereto but that of way or transit to and from their depot on H street, and of preserving and repairing the same when necessary.

3. Resolved, that it is not expedient at this time to prohibit the introduction of locomotive steam-engines within the limits of this city.

4. Resolved, that it is expedient to prohibit any machine or carriage of any kind whatever from remaining stationary upon any railway or street longer than is necessary for the delivery of its contents.

5. Resolved, that it is expedient to prohibit the propelling upon
56 any railway or street of any vehicle whatever at a rate of velocity exceeding three miles an hour.

The 1st, 2d, and 3d resolutions were passed as above written, and the 4th and 5th resolutions were amended, and then adopted in form as follows, viz:

4. Resolved, that it is expedient to prohibit any machine or carriage of any kind whatever used by said company from remaining stationary upon any railway, or street upon which such railway shall be, longer than is necessary for loading the same or for the delivery of its contents.

5. Resolved, that it is expedient to prohibit the propelling upon any railway of any vehicle whatever at a rate of velocity exceeding four miles an hour.

Ordered, that the committee who made the aforesaid report prepare and bring in an ordinance in conformity with the resolutions agreed to.

SEPTEMBER 9TH, 1839.

Ordinance reported and laid on table.

OCTOBER 28TH, 1839.

Ordinance taken up and passed as follows, viz:

An ordinance concerning railroads in the city of Richmond, and to regulate the use of railroad-cars and other carriages upon the same.

1. Be it ordained by the president and common council of the city of Richmond in common hall assembled, and it is hereby ordained by the authority of the same, that if any railroad company, their officers, agents, or servants, shall hereafter place, or cause to be placed, or shall in any manner aid, abet, or assist in placing or causing to be placed upon any railroad or railroad track in any street in the city of Richmond, any car, machine, or vehicle whatever, and the said car, machine, or vehicle shall remain upon any such railroad or track longer than is necessary for the delivery of its contents, or than is necessary to enable the said company to make up its trains, the said company, so offending, or their officers, agents, or servants, if free, shall for every such offence pay a fine of ten dollars.

2. And be it further ordained by the authority aforesaid, that hereafter no car, engine, carriage, or other vehicle of whatever kind, shall be drawn or propelled by steam, animal power, or otherwise, upon any railroad or rail track in any street in the city of Richmond at a rate exceeding four miles per hour. And if any free person or persons shall draw or propel, or cause to be drawn or propelled, or shall aid, abet, or assist in drawing or propelling, or in causing to be propelled or drawn by steam or otherwise, any car, engine, carriage, or other vehicle whatsoever, upon any railroad or rail track, in any street in the city
57 of Richmond, at a greater rate than four miles per hour, he or she

so offending shall be adjudged to pay, and shall pay, a fine of ten dollars.

3. And be it further ordained by the authority aforesaid, that every fine and penalty imposed, declared, inflicted, or incurred, or which may be imposed, inflicted, or incurred under and by virtue of this ordinance by or against any free person, shall and may be recovered with costs by warrant before the mayor, recorder, or any alderman of the city of Richmond, as debts under twenty dollars are by law recoverable, for the use of the mayor, aldermen, and commonalty of the city of Richmond.

4. This ordinance shall take effect and be in force from and after the first day of December, in the year of our Lord one thousand eight hundred and thirty-nine. (See section 35 of the existing ordinance concerning streets.)

JULY 14, 1845.

A petition was presented from a large number of property-owners on H or Broad street, and other residents in this city, representing that they labor under an oppressive and distressing grievance, to wit: the passage of the steam-engines of the Richmond, Fredericksburgh and Potomac Railroad Company through the said street, which they pray the counsel to relieve them from; and setting forth the injuries and danger arising from the use of the said engines. Referred to select committee of five, to wit: Mess'rs Slade, Wickham, Haxall, Lancaster, and Goddin.

AUGUST 11, 1845.

Majority and minority reports from said committee presented, and laid on the table and printed.

NOVEMBER 17, 1845.

Both reports considered. Finally, on motion of M'r Wickham, the council adopted the following as a substitute:

Resolved, that the council of the city of Richmond not only maintains its right to prohibit the use of locomotives within this city, whensoever it shall appear expedient to do so, but, in contradiction to all allegation to the contrary, they do most positively deny all responsibility to indemnify the railroad company for any such exercise of their legitimate powers. They admit no other right in this respect on the part of that company, but to a favorable and indulgent consideration—a claim which, from its nature, becomes less and less the longer it is favored.

Resolved, that considering the great benefit which the city has derived from the railroad, and the great loss sustained by the stockholders of the road, who have received no returns for many years, the council regard it as inconsistent with the favor which the company may reasonably expect at this time to subject them to the heavy charge
58 and the derangement of their affairs which would be occasioned by the prohibition of the use of locomotives within the corporation limits.

AUGUST 12, 1850.

A communication was submitted from Edwin Robinson, president of the Richmond, Fredericksburg and Potomac Railroad Company, asking the consent of the council to an occasional use of the track in the street, between Sixth and Seventh and Seventh and Eighth streets, for the right or part of it, during the next three or four months. Referred to commissioners of streets generally, with authority to grant the request i they deem it expedient.

NOVEMBER 28TH, 1853.

A petition was presented from Grubbs & Apperson, and other owners of property, and residents upon Broad street, and other citizens, complaining of the nuisance created by the Richmond, Fredericksburg and Potomac Railroad Company, by the extension of its road through said street, and running the cars thereupon with steam-engines; and calling upon the council to relieve the petitioners by removing the railroad from said street. And the same having been read, on motion of Mr. Mills:

Resolved, That the petition of Mess'rs Grubbs & Apperson, and others, be referred to the commissioners of streets generally, with instructions to enquire into the legality and expediency of removing all railroads now located within the corporate limits of the city, and of prohibiting their introduction hereafter.

DECEMBER 6TH, 1853.

M'r Snead submitted a resolution "declaring that the council have never parted, and cannot of right part with the power to control the construction and continuance of railroads, and the mode of transportation thereon in the streets of this city." And the same, on his motion, was laid upon the table.

DECEMBER 12TH, 1853.

A communication from E. Robinson, president of the Richmond, Fredericksburg and Potomac Railroad Company, requesting permission for their cars to remain on the track, at intervals, between the cross streets, until the necessary arrangements he is engaged in making, to obviate the objections on the part of some citizens to this use of the track, can be completed, was referred to the commissioners of streets generally.

JANUARY 9TH, 1854.

Further petitions were presented from a number of citizens, complaining of the use of Broad street by the Richmond, Fredericksburg
59 and Potomac Railroad Company, and for removal of the railroad from said street. Referred to the commissioners of streets generally.

FEBRUARY 13, 1854.

From the commissioners of streets generally was presented a report upon the petitions referred to them on the 9th January last. Laid on table.

MAY 29TH, 1854.

Proceedings of a meeting of citizens of Monroe ward, of date 20th instant, on the subject of removing the Richmond, Fredericksburg and Potomac Railroad from Broad street, were presented and laid on the table. Also, a petition from a number of citizens against any action by the council respecting the obstruction of Broad street by said company. Also, a further petition from a number of citizens against such action.

JUNE 26TH, 1854.

The report laid on table 13th February last was taken up and considered, together with a substitute offered by M'r Saunders. Leave was given to counsel for the petitioners and the railroad company to be heard thereupon. The question being put on the following resolution of said substitute, was lost by a tie vote—six to six. The resolution so lost was as follows:

"That no steam-engine, tender, freight-car, passenger-car, or other

car of any kind, shall be allowed to stand, load or unload, in Broad street, but every such engine or car shall be carried or propelled immediately into a depot, and there discharge its load of freight or passengers, as the case may be."

The report and proposed substitute were then laid on the table.

JULY 6TH, 1874.

Report of commissioners of streets generally and the proposed substitute again laid on the table; and a committee of two from each ward, appointed by the council, to confer with the president and directors of the railroad company, to wit: Mess'rs Haskins, Talbott, Fry, McCance, Scott, and Saunders.

AUGUST 8, 1870.

"Resolved, That the city attorney be required to make an investigation, and to report thereon to the next regular meeting of the city council, or as soon thereafter as practicable, what legal right the Richmond, Fredericksburg and Potomac Railroad Company has to use the centre of Broad street for railroad purposes, the prevailing impression
60 being that the charter granted has long since expired." Adopted on motion of M'r Laube.

OCTOBER 3D, 1870.

A communication from the city attorney, relative to the occupation of Broad street by Richmond, Fredericksburg and Potomac Railroad Company, transmitting an elaborate statement concerning the matter, prepared by the counsel of said company, was read; and, on motion of M'r Wynne, the same was referred to the committee on streets for their report.

OCTOBER 17, 1870.

Extract from report of last-named committee adopted by the council at this date:

"Your committee further reports that they have sent all the papers appertaining to the removal of the Richmond, Fredericksburg and Potomac Railroad from Broad street back to the city attorney, with the request to report to your committee at their next meeting his own opinion about the legality of said company occupying Broad street as their railroad track."

NOVEMBER 7TH, 1870.

The president submitted an opinion of the city attorney upon the "right of the Richmond, Fredericksburg and Potomac Railroad Company to use the centre of Broad street for railroad purposes," in response to the resolution of the council, adopted 8th August last; and the same having been read, was, on motion of M'r Wynne, referred to a special committee of five, to be appointed by the president. Committee: Mess'rs Wynne, Laube, Davis, Jenkins, and Riddick. (The last-named member having resigned his seat in the council, M'r Greaner was appointed to this committee, January 16th, 1871.)

Opinion of Judge Meredith concerning Richmond, Fredericksburg and Potomac Railroad Company.

RICHMOND, *November 5th*, 1870.

GENTLEMEN: By a resolution of the council, I am called on to make an examination and report "what legal right the Richmond, Fredericksburg and Potomac Railroad Company has to use the centre of Broad street for railroad purposes." I have made the examination and report

that, by its act of incorporation, passed by the general assembly on the 25th day of February, 1834, the company is authorized to make a railroad "from some point in the corporation of Richmond, to be approved by the common council, to some point within the corporation of Fredericksburg." The company soon after its organization informed the council that it was expected "to conduct the road from the Rich-
61 mond turnpike along H street to a point at or near the intersection of H and 8th streets, and for the present to terminate it there, with proper connections with the contemplated warehouses and workshops of the company on lots Nos. 477 and 478." Upon receiving this communication, the council, in December, 1834, by a resolution approved the proposed location of the road, and authorized the prosecution of the road within the limits of the city, on the proposed location, and accordingly the track of the road was made along the centre of Broad street, to its intersection with Eighth street, by this assent of the council.

It is, then, by reason of the grant in the charter of the company to bring the road to some point within the limits of the city, and the assent of the council that the road might enter the city along Broad street to its intersection with 8th street, that the company claim the right to use the centre of Broad street for railroad purposes.

The resolution calling on me to report on this subject concludes with this language: "The prevailing impression being that the charter granted has long since expired." I do not know what has given rise to this "prevailing impression." There is nothing in the charter of the company to show that it has expired, nor is there anything in the resolution of the council limiting its assent to the location of the road along Broad street.

Very respectfully,

JOHN A. MEREDITH,
City Attorney.

Copy of legal opinion of R. T. Daniel, esq., as to the right of the Richmond, Fredericksburg and Potomac Railroad Company to use Broad street.

The council of the city of Richmond having directed an enquiry into the legal right of the Richmond, Fredericksburg and Potomac Railroad "to use the centre of Broad street for railroad purposes," the general impression being that the charter granted has long since expired, it will appear:

1. That the charter of the company is perpetual, subject to the legal conditions of forfeiture and dissolution, of which there has been no breach.

2. The right of the company to use Broad (H) street for its road is the same with its right to any other part of its road, a chartered right. By its act of incorporation (February 25, 1834) the company is authorized to make a railroad "from some point in the corporation of Richmond, to be approved by the cammon council, to some point within the corporation of Fredericksburg." The company, soon after it was organized, informed the council that it was expected to conduct the road from the Richmond turnpike along H street to a point at or near the intersection of H and Eighth, and for the present to terminate it there,
62 with proper connections with the contemplated warehouses and workshops of the company on lots Nos. 477 and 478. By a resolution adopted on the 25th December, 1834, the council approved the

proposed location of the road, and authorized "the prosecution of the work within the limits of the city on the proposed location." The company having completed their road on this part of the route, opened it for travel and transportation with cars and locomotive engines on the 25th February, 1836, and has maintained and continued it without interruption from that time until the present. The right of the company to have its road on H street has never before been questioned by the city, and is generally conceded.

3. But it has been suggested that the city has the right to exclude steam-engines from the part of the company's road which is within the limits of the city—a right sought to be derived from two sources: 1st, by reservation, when the council approved the location of the road within the city; 2d, in virtue of the general police jurisdiction of the council over the streets of the city.

The first of these pretensions assumes that the company derives its right to bring its road into the city from the consent of the council. But that is contradicted by the letter of the charter, as quoted above. The point or terminus in the corporation may be fixed by the council, and no more. When that was fixed the company had the right to carry the road from that point through the limits of the corporation to a point in the corporation of Fredericksburg. The council was allowed that privilege doubtless with reference to the public convenience, but the route, from the point so fixed, and the mode of acquiring the right of way, were governed by the company's charter. For that purpose the company could "enter upon and condemn all lands and tenements through which they may desire to conduct their railroad, and to lay out the same according to their pleasure, so that the dwelling-house of no person be invaded without his consent." Subject to the council's right to fix the terminus, the streets of Richmond were as much subject to be entered upon and condemned as any other property.

There is no exemption of streets and highways from the operation of this power; and in the case of the corporation of Fredericksburg, not even the power to fix the terminus is reserved to the council. The consent of the council of Richmond that H street might be used for the railway, had only the effect to dispense with the usual proceedings to acquire the right so far as the corporation was concerned. It did not confer the right, for the council had no power under the charter of the city to devote the street to such use, and could not confer a right which it did not possess.

The right to prescribe the point from which the road should be constructed has no sensible connection with the assumed right to prescribe the mode in which it should be used when constructed; and the attempt to connect them, and to derive the one from the other, is without the show of reason. When, then, the council sought to qualify its
63 approval with the proviso, "that the corporation shall not be considered as hereby parting with any power or chartered privilege, not necessary to the company for constructing the said railroad, and connecting the same with the depot of the said company within the limits of the city," whatever was intended by it, it could not operate as the reservation of a right to prescribe the mode in which the road should be used, because that right belonged not to the council, but had been given to the company by the legislature. It is well established that a grant carries with it the rights proper for the enjoyment of the thing granted. The use of steam-engines on railroads between distant points is an inseparable incident of such improvements, the necessary means to their use, and it was well understood that they would be employed

on this road when completed. The unrestricted grant of power to build and use the road carried with it the right so to use it, even if it had not been conferred. But it is expressly conferred by the 24th section of the charter.

The company "may place on the railroad constructed by them under this act (without exception of any part of its road) all machines, wagons, vehicles, carriages, and teams whatsoever, which they may deem necessary and proper for the purposes of transportation."

Nor can this power be derived from the police jurisdiction of the council over the streets. The city charter certainly confers on it the power to pass ordinances necessary for the good order and government of persons and property in the city: and it has specific powers as to the streets, to open and widen them, pave and light them, keep them smooth and unobstructed, and to exercise over them a general police authority. It may, under this head, regulate the speed of travel on them; and it has passed an ordinance prescribing the speed of the company's trains on H street, that bells shall be used on the trains, and other rules, of which the authority has not been questioned. But these are public-trust powers, and are inalienable. As they could not be granted away by the council, the reservation of them was superfluous. They might have conferred the power to prevent the introduction of the road, had it been unauthorized by the legislature; but they are subordinate to the right of the company, expressly granted by law, to occupy and use the street for the purposes of its charter.

The streets of the city are the public highways of the State, free to the use of all the citizens of the State, and not merely of the residents of the city. They are under the jurisdiction and control of the supreme legislature of the State; and the city council has no control over them, beyond that given in the city charter, viz: for keeping them unobstructed and in good repair, and for maintaining proper police in them. The city council may open, but cannot close, such highway to the public, at least without substituting for it an equivalent. Nor can they exclude from their proper use any of the citizens of the commonwealth, or others authorized by law to use them, even when the right to make such use of them has not been specially granted by the legislature.

Still less can those (whether individuals or corporations) be by
64 the council excluded from such use to whom the supreme legislature of the State has specially granted the right to such use in the exercise of its sovereign power, the right of eminent demesne, a power which can modify or repeal the city charter itself.

4. Were the right to use locomotive engines on its railroad on H street at all questionable in its original, it would be confirmed by uninterrupted use, with a claim of right from the time the road was opened, in February, 1836, to this time, more than thirty-four years. That some public inconvenience results from the use of streets of cities for railroad purposes cannot be denied; it is inseparable from the advantages of such improvements, but is foreseen and supposed to be compensated by them. In this instance those whose sense of inconvenience may have blinded them to the advantages of the improvement have on several occasions made it the theme of complaint; but the council has wisely weighed the general benefit against the partial evil, and declined controversy with the company on the subject. It has more than once recognized these benefits expressly, and has on one occasion entered into contract arrangements with the company based on such recognition.

In the inception of the improvement, which was indeed a pioneer enterprise, the council manifested anxiety for its success by contributing

to the expense of the preliminary surveys of its route, and cordially approved its introduction into the city. When the road was about to be opened for use, apprehension was expressed in a meeting of citizens of danger from the use of steam-engines on the streets, and that crossing the street would be obstructed by the elevation of the track above its level. The council thereupon directed enquiries—"1st, what injury had been done H street by laying down the railroad on the street, and if any, its character and extent, and the remedy for it; 2nd, a conference with the company to ascertain what will be its future plans and operations as they relate to the travel on the road: 3rd, what injury will result to the citizens resident and owning property on the street by the execution of the plans and operations of the company as regards the use of steam on the road." The company, in reply, explicitly informed the council that "their plan, so far as relates to the travel on the road, is to have cars drawn by a locomotive;" as to the obstruction of crossing the street, that, in its unpaved and muddy condition, if the track of the road were placed on a level with it, travel on the street would seek its way upon the railroad up and down its length, thus making it a common highway, obstructing its use by the company, and increasing the danger of accidents from collision. Thereupon a plan was recommended by the city engineer as a "compromise of interest," the principal feature of which was the paving of H street from Brook avenue to the eastern side of Eighth street, at the joint expense of the company and the city, the crossings at the cross streets to be level with the track of the road, the rest of H street to be paved on each side of the track up to
65 the rails of the road, the track to be at such an elevation as would permit the easy crossing of wagons and carriages, but prevent travel except by the trains on the road lengthwise, and so "that the grooves for the flanges of the wheels (of the locomotives) would have an outlet for the escape of the earth, gravel, and snow that would be constantly accumulating, and would produce serious inconvenience." This plan was effected, and the company proceeded with the use of locomotives on this part of its road.

In the year 1838 there were complaints to the council of the company's use of locomotives on its road on H street.

The company on that occasion communicated to the council what it considered to be its rights: "The rights given by its charter, the expense which it has encountered in fitting up and building its depot after the hall approved the terminus, and the understanding at the time the company agreed to bear a large part of the expense in paving H street, combine together to create rights which cannot be divested." The council declared it on the occasion to be inexpedient to interfere with the company's right. In a report made to the council by its committee at this time, after premising that the council are aware of the dangers arising from railroads in cities, and have paid due attention to the complaints by the citizens on this head, it is said to be "unwise to impose restraints upon enterprise in works of internal improvement promoting the prosperity of the city and of the State at large." "The company have undertaken, with true public spirit, a great work, requiring the investment of a large capital, amounting to a million of dollars, and have prosecuted the work with an expedition heretofore unknown in the annals of our public works: they have encountered immense expense in providing permanent workshops at their depot, and in purchasing steam-engines, and in carrying their transportation with speed and efficiency: they have assisted the corporate authorities in paving H street by paying one-third of the costs thereof, amounting to near $7,000, and

after encountering and surmounting every difficulty have as yet realized little or no profit, the dividends having been small and no part of the capital yet redeemed." "Were the council to exclude locomotives from H street, it would necessarily compel the company to purchase other property within the corporation, to provide horses and drivers, with all the attendant expenses, and to keep them in addition to the expensive steam power already amply sufficient for the purpose. It would subject the travel and trade to the annoyance of delay within half a mile of the depot, and the public at large and the company to an inconvenience more burdensome than those to which a few, comparatively speaking, are subjected."

In 1845 complaints were again directed, not against the use of H street for the railroad, but to the employment of steam-locomotives instead of horse power, which, though an untried experiment, has been regarded by some as more safe and convenient. A committee of the council then reported:

66 "From the evidence laid before the committee, it appears that if steam engines and cars were drawn into the city by horse power in order to accommodate and prevent the unnecessary delay of the cars in the streets, a double-track railroad would have to be laid down from the present depot to the corporation line. Besides this, the company would have to provide at least forty horses and twenty-seven men, and thirty additional freight-cars, and fifteen coal-cars, at a cost of $22,000. In addition to this original outlay, the company would be put to the additional charge annually of $15,391, a charge equal, as the committee are informed, to one-third of the profits of the whole road. Your committee are of the opinion that if a double-track railroad were laid down upon Broad street, and the cars brought in by the large number of horses necessarily required for the purpose, (say forty,) the inconvenience of their passing along the street the whole day would be to the citizens residing thereon, and to the business transactions, far greater than that of which they are now complaining." "Should a double-track railroad be dispensed with, your committee believe that a much larger number of men and horses would be required, and the delay in doing the business of the railroad be much augmented. How far the city would be benefitted by the latter course it is unnecessary to——." And the committee proceed to say that should the company be subjected to this additional expense "by reason of its being prohibited from coming into the city, they would be entitled to ask at the hands of the city an indemnity therefor;" and that "from the proceeding between the railroad company and the common hall, the former, it would seem, was justified in supposing that when it agreed to pay one-third of the cost of paving Broad street it would not afterwards be required to dispense with its locomotives within the limits of the city; for it was doubtless known to all that the locomotives were propelled by steam, as they are now. If the common hall had meant at that time to prohibit the railroad company from using steam-locomotives in the city, it would have been much more fair and honorable to have said so, instead of proposing to said company to expend upwards of $7,000 in paving Broad street.

(Signed) R. T. DANIEL.

No. 9.

Depositions of Moncure Robinson, Conway Robinson, R. B. Haxall, Charles F. M. Garnett, Samuel Watts, and Dr T. P. Atkinson, with the exceptions thereto of the attorney for the city.

Deposition of Moncure Robinson, taken 19th February, 1874, marked "No. 9."

Interrogatories to be propounded to Moncure Robinson, esq., in taking his deposition to be read in evidence in a certain controversy now pending in the circuit court of the city of Richmond, wherein the
67 Richmond, Fredericksburg and Potomac Railroad Company is appellant, and the corporation of the said city is appellee.

I. What is your age, and where do you reside?

II. Have you ever had any professional, official, or business connection or relation with the Richmond, Fredericksburg and Potomac R. R. Co.? If yea, state what those connections or relations were, and where and during what period, according to your best recollection, they existed?

III. At the time of the location in the city of Richmond of the southern terminus of the Richmond, Fredericksburg and Potomac Railroad, were you cognizant of any negotiations had or communications which passed between the aforementioned railroad company and the common council of the city of Richmond? Did you or not take any part, and, if so, what part in any such negotiations or communications? State any and all facts within your knowledge and recollections relating to such negotiations or communications *of* which in any way affected the objects, intentions, meanings, or results thereof?

IV. State if you know whether, at the time the aforementioned negotiations or communications were pending, the construction of the Richmond and Petersburg Railroad was contemplated or proposed, and, if so, whether a railway connection between that railroad and the Richmond and Fredericksburg Railroad was also contemplated, and, if yea, by what route was it expected to be made.

V. Have you ever known at any time during the thirty-seven years succeeding the incorporation of the R., F. & P. R. R. Co. in 1834 the right of that company to maintain and use its railroad track along Broad street to its intersection with 8th street seriously disputed in the State legislature, in the city council, in any court of justice, or in any other public tribunal?

VI. State any other facts within your knowledge or recollection which relate to or materially affect the controversy in which this your deposition is to be read.

To the first interrogatory. My age is seventy-two, and I reside in the city of Philadelphia.

To the second interrogatory. I was, during the years eighteen hundred and thirty-five, thirty-six, and thirty-seven, the chief engineer of the Richmond, Fredericksburg and Potomac Railroad, which was located and constructed by me during these years between Richmond and Fredericksburg. I was afterwards, from the year eighteen hundred and forty to eighteen hundred and forty-five inclusive, the president of the company, during which period the road was extended to the mouth of Acquia Creek.

To the third interrogatory. I was cognizant of the negotiations had between the Richmond, Fredericksburg and Potomac Railroad Company and the municipal authorities of the city of Richmond in refer-
68 ence to the Richmond terminus of the road, and the location of the road in Broad street, but do not recollect being present at the conferences on the subject. I recollect only the result of those conferences, which was the adoption (as I supposed at the time with the gen-

eral consent of the community, as well as the approval of the city council) of the site selected by me for the depot and shops of the company and the location of the railroad advised by me in Broad street. I recollect farther on this subject that the plan agreed on for the use of Broad street proposed only a provision for crossing at the intersection of Broad street with other streets, and that with a view to the better accommodation of the residents on Broad street, the company afterwards agreed to defray a portion of the costs (I think one-third) of paving the portion of the street then built on.

To the fourth interrogatory. I recollect perfectly at the time of commencement of the Richmond, Fredericksburg and Potomac Railroad it was viewed as a link in a chain of railroads then in progress of execution or projected between the North and South, and that the Petersburg and Roanoke Railroad was at that time nearly or quite finished. Of course a railroad between Richmond and Petersburg was both contemplated and proposed by the parties who had projected and embarked in the Richmond, Fredericksburg and Potomac and the Petersburg and Roanoke Railroads. There was at the time opposition both in Richmond and Petersburg (though more in Petersburg) to a physical connection of these roads. Yet this opposition, it was believed, would in time cease, and my impression was that the connection between the Richmond, Fredericksburg and Potomac Railroad and the Richmond and Petersburg Railroad, whenever made, would probably be by way either of Eighth or Ninth streets.

To the fifth interrogatory. The location of the road in Broad street was at the time of its being made desired generally by the residents of Broad street, and I cannot recollect ever hearing during its construction or for a long time afterwards any doubt expressed by any one of the right of the company to maintain and use its railroad track along Broad street to its intersection with Eighth street. From time to time since I have heard doubts expressed whether the use of locomotives propelled by steam power might not be prevented on it. These expressions have attracted my attention less than they otherwise would from the conviction that any given rate of speed, any amount of business would be conducted with less risk and inconvenience in cars drawn by locomotives that by horses, and that the residents on a street, if it devolved on them to choose, would, if the experiment of horse-power for a large business was made, soon return to locomotives. I was aware also that in other States in which the question had been carried up to the highest tribunals the decisions had been that where the right to use a street or streets had been conferred on a railroad company free of restrictions, it carried with it the right to use the same power on them which was used on the rest of the road.

69 To the sixth interrogatory. I know of nothing more bearing on the subject except the fact that locomotives are now used in Philadelphia for long distances on some of its most closely-built and narrow streets, and that it is proposed to use them on a railroad now being constructed along the Delaware front of the city, in order that freights and merchandize may be received from and delivered to the warehouses and shipping at the wharves, and that passengers are conveyed by locomotives through Newark and other large towns between New York and Philadelphia at a speed of eight miles an hour or upwards. They are also conveyed by locomotives through Wilmington, the largest town on the Philadelphia and Baltimore Railroad.

MONCURE ROBINSON.

Deposition of Conway Robinson, taken 20th February, 1874, marked "No. 9."

First interrogatory. What is your age, and where do you reside?

Answer. The 68th year of my life was completed on the 15th of September, 1873. I reside in the county of Washington, District of Columbia.

Second interrogatory. Have you ever had any relations or connections, official or other, with the Richmond, Fredericksburg and Potomac Railroad Co.? And, if yea, state what those relations and connections were, and when and during what periods of time they existed.

Answer. In the act incorporating the company, I was designated as one of the commissioners. I acted as such, and was one of the subscribers for stock in the company. I was one of those who at the first meeting of the stockholders were elected directors, and I continued to be a director of the company until the 20th of June, 1836, when I was elected its president—which office I held until my resignation of it in the latter part of 1838. As to whether after resigning as president I was appointed a director, and, if so, how long I acted, my recollection at this moment is not very distinct. I have acted as counsel for the company in the argument of causes in courts in which I practiced, and have been its professional adviser in other matters.

Third interrogatory. Were you cognizant of, or did you take any part in, any negotiations or communications between the beforementioned railroad company and the common council of the city of Richmond in relation to the location and establishment of the southern terminus of the said railroad in the city of Richmond? If yea, state about what time and during what periods those negotiations and communications were made, and what part, if any, you took in them. Please also state fully all facts and circumstances within your knowledge or recollection which in any way affected or influenced the objects, purport, or results of those negotiations and communications.

Answer. I cannot now say that previous to the 22d of Decem-
70 ber, 1834, I was cognizant of or took any part in any negotiations or communications between the company and the common council of the city of Richmond in relation to the location and establishment of the southern terminus of said railroad in the city of Richmond. According to my recollection, I was present at the meeting of the board of directors on that day, and voted for the resolution then adopted. I do not think I drew that resolution. Mr John A. Lancaster was then president of the company, and my brother, Moncure Robinson, was its engineer. My belief is that the resolution was drawn by him, and at the meeting of the board was proposed either by the president or myself. Inasmuch as the company was incorporated to make a railroad from some point within the corporation of Richmond, to be approved by the common council, the object of the resolution was to designate and ask the common council to approve as such point a point at or near the intersection of H, or Broad street, and 8th street. The Richmond and Petersburg Railroad Company had not then been incorporated, but this railroad had then been thought of as a proper connecting link between the line of railroad north of Richmond and that south of Petersburg, and it had also been thought that the Richmond and Petersburg Railroad would probably terminate in Richmond at or about the point at which it has since terminated, south of the basin; and it was contemplated that in such event, there might, with the assent of the proper authorities, be made a railroad from that point

along 8th or 9th street, to the point at or near the intersection of 8th and H, or Broad street. This, according to the best of my recollection, was contemplated by members of the board at the date of that resolution, and may serve to explain its language. The report made by the board to the stockholders at the next annual meeting after that resolution was drawn by me.

Fourth interrogatory. Were you cognizant of, or did you take any part, and if any, what part, in the preparation and adoption by the directory of said railroad company, and the communication to the common council of the said city, of certain resolutions in relation to the establishment of the southern terminus of said railroad in the city of Richmond, in the month of December, 1834? And, if yea, state what part you took in the same, and state fully all facts and circumstances within your knowledge and recollection which affected the objects, purport, and result of the said resolution, or which tend to or aid in a correct understanding of their true meaning, object, and intention.

Answer. What I have already said seems to answer this interrogatory, in part at least. In addition, I will now say that I was one of the committee to whom, in the fall of 1838, the board referred a petition of some of the citizens of Richmond, praying the common council to prohibit the use of locomotive-engines upon the streets of the city, and a resolution reported to the common council by its committee. The report of the committee was made to the board on the 22d of
71 October, 1838, and approved. I drew that report. What is narrated therein, so far as it relates to matters within my own knowledge, is true, and so far as it relates to matters within the knowledge of others, was and is believed by me to be true.

Fifth interrogatory. Have you ever known at any time during your connection, either official or professional, with the said railroad company, its right to the maintenance and use of its railroad track on Broad street, and to permanent establishment of the southern terminus of its railroad at or near the intersection of Broad and 8th streets, in the city of Richmond, to be seriously disputed in the legislature of the State, in the city council, or in any court of justice?

Answer. I have no knowledge of the company's right to the permanent establishment of the southern terminus of its railroad at or near the intersection of Broad and 8th streets, in the city of Richmond, having been seriously disputed in the legislature, or in any court of justice: nor do I know that it has been seriously disputed in the city council. If it has been, it may, I suppose, be ascertained from the proceedings of that body.

Sixth interrogatory. State fully all and any facts within your knowledge and recollection, and not already stated by you in answer to the foregoing interrogatories, which relate to or materially affect the matters in dispute in the controversy in which this, your deposition, is to read in evidence.

Answer. If there be any other facts within my knowledge which materially affect the matters in dispute in this cause, they are not recollected at present.

CON. ROBINSON.

Deposition of Richard Barton Haxall, taken on the 20th and 26th Feb'y, 1874, marked "No. 9."

1st. Question by counsel for appellant. Where do you reside, and where did you reside prior to your removal to your present residence?

Ans. In the county of Orange, near Gordonsville, I now reside; prior to my removal thither I resided in the city of Richmond.

2nd. Question by same. How long did you reside in Richmond, and in what business occupation were you engaged during your residence there?

Ans. I resided in Richmond from 1809 to 1871; I was a flour manufacturer.

3rd. Question. Had you, during or prior to the year 1834, business or other relations or connections with citizens or residents of the town of Petersburg, and had you or not, during or prior to that year, frequently or repeatedly visited that town?

Ans. I have had none except as executor of the late Mr. William Haxall, in winding up his estate; I have, during or prior to
72 that time, frequently visited Petersburg; I should say I had no business relations with the citizens of Petersburg prior to 1834, the year in which my uncle, Mr. William Haxall, died; he died in July, 1834; prior to and after his death I frequently visited him; I was there frequently during his lifetime in a social way, and after his death as his executor; most intimate relations existed between my uncle, William Haxall, and myself, up to the time of his death, in July, 1834; he was my partner in business, and scarcely a day passed without our exchanging letters; he was my senior partner—the capitalist of the firm.

4th. Question by same. Do you or do you not know whether, prior to December, 1834, the Petersburg Railroad, connecting Petersburg with the Roanoke River in North Carolina, and having its northern terminus on Washington street, in that city, was operated with locomotive-engines and cars between its terminus on Washington street and its southern terminus in North Carolina? State all you know on this subject.

Ans. I believe I did see locomotives and cars on that road prior to July, 1834, the date of my uncle's death; I know I never saw cars drawn by horses on that road; I remember seeing locomotives and cars on that road from my uncle's house before his death; on his death, indeed very soon after it, I sold his house and never went there afterwards; so I must have seen locomotives and cars on that road prior to his death, in July, 1834.

5th. Question by same. The Richmond and Petersburg Railroad Company, chartered by the Virginia legislature at its session commencing on the 7th of December, 1835; do you know whether or not, in December, 1834, the obtaining that charter and constructing that railroad had been a subject of consideration and discussion among the business-men of Richmond and Petersburg? State all you know on this subject.

Ans. I can't say whether the people of Petersburg took any active interest in it; the people of Richmond certainly did; there was a perfect furor about it, and a great many took stock, indeed, greatly beyond what was wanted.

6th. Question by same. Do you know whether, during or prior to the month of December, 1834, a railway connection between the Richmond, Fredericksburg and Potomac Railroad, which was chartered in February, 1834, and the proposed Richmond and Petersburg Railroad, which was chartered at the legislative session of 1835 and '6, was the subject of consideration and discussion among the busines-men of Richmond, and among the stockholders or directors of the Richmond, Fredericksburg and Potomac Railroad Company? State all you know on the subject.

Ans. I remember it was a subject of consideration among the engineers and directors of the Richmond, Fredericksburg and Potomac Rail-

road Company, as I was a director of that road then from its commencement to 1836, when I became a director of the Richmond and
73 Petersburg Railroad, which I have continued to be until last year, December, 1873; I can't distinctly remember whether or not, in or prior to December, 1834, such a connection was a subject of consideration among the business men of Richmond.

7th. Question by same. Were you a director of the Richmond, Fredericksburg and Potomac Railroad Company during the month of December, 1834, and were you present at such a meeting of that directory on the 22nd of that month, at which resolutions were adopted defining the proposed location of that company's railroad in H, or Broad street, and of its terminal station at or near the intersection of that street with Eighth street, in the city of Richmond, and asking the approval by the city council of that location? If yea, state any fact or facts within your knowledge and recollection which relate to or are material to a correct understanding of the true object, intent, and meaning of those resolutions.

Ans. I was a director, as I have before stated, from the commencement of the company until the spring of 1836. I believe I was present at that meeting, as I seldom missed a meeting of the directors. Since so much of my answer was made, I find, by reference to the record of the proceedings of the board of directors of that company—I find I was not present on the 22nd December, 1834, when the resolutions referred to were adopted by the board; but I was present at a meeting of the board on the 31st of December, 1834, when the action of the council upon those resolutions was reported to the board and ordered to be filed among its papers and entered on its minutes. I think the object of those resolutions was to establish that location as the terminus of the road; but also to provide for a future connection of the road with the Richmond and Petersburg Railroad, which was then contemplated but not chartered until the succeeding session of the legislature.

8th. Question by same. State any and all facts within your knowledge and recollection which relate to or materially affect the subject of the controversy and litigation in which this, your deposition, is to be read, or the interest therein of the parties to that litigation; and especially state whether at any time during your connection with the Richmond, Fredericksburg and Potomac Railroad Company, or during your residence in the city of Richmond, you have ever known or heard that the right of that company to its location of its road in Broad street, or of its terminal station at the intersection of Broad and Eighth streets, was ever seriously disputed in a court of justice, in the city council, or in any other public tribunal or deliberative body.

Ans. I have never heard the legal right of the company to its present terminus on Broad and Eighth streets questioned by any one before the commencement of this suit. I never entertained any doubt of the right of the company to that termination.

74 The further taking of these depositions is continued until Thursday, the 26th instant, at the same place and between the same hours.

9th. Question by counsel for . In your answer to the 4th question in chief you say you saw locomotive-engines and cars on the Petersburg Railroad, between its terminus on Washington street and its southern terminus in North Carolina, prior to July, 1834; please state if you saw said locomotive-engine and cars within the corporate limits of Petersburg, and if so, in what streets within that city.

Answer. I saw them on Washington street, in the city of Petersburg; the railroad crossed, I believe, a number of other streets; I do not know that the other streets were even then named or built upon; they were probably designated on the map of the city; I, however, only noticed the locomotive-engines and cars at that date on that road on Washington street, near its junction with Sycamore street.

The counsel for the appellee not wishing to cross-examine the witness, farther this defendant saith not.

R. B. HAXALL.

Deposition of Samuel Watts, taken 4th March, 1874, marked "No. 9."

1st. Question by counsel for appellant. Where do you reside, and how long have you resided there?

Ans. I reside in the city of Portsmouth, Virginia, and have resided there all my life, that is, for seventy-four years.

2nd. Question by same. Do you remember the completion of the Portsmouth and Roanoke Railroad, which was chartered in March, 1832, and if so, do you remember whether from the time of its construction in Portsmouth, locomotive-engines were used upon its roadway within the corporate limits and in any of the streets of Portsmouth?

Answer. I remember its completion, but not exactly the date; I think in the year 1835, from the time of its construction or completion, locomotive-engines were used on its roadway in Portsmouth throughout the entire length of High street, in that city.

3rd. Question by same. Do you know whether, prior to 1835, any locomotive engine or engines had been by the company provided and held in readiness to use on its road within the corporate limits of Portsmouth, and if so, whether any opposition to such use was made by any of the corporate authorities of Portsmouth, or by any legal proceedings on the part of any individuals, citizens of Portsmouth, either before or after such was commenced?

Answer. Yes, I think one locomotive had been provided for that purpose; and before the road was completed to Weldon an engine was
75 used on High street; I never heard of any opposition by the corporate authorities or others.

4th. Question by same. Have locomotive-engines and trains of railroad cars been at any time, since the completion of this railroad, used in any other street than High street, in the town of Portsmouth, without any opposition from the town authorities or from individuals in the courts? If so, please state all that you know as to such use.

Answer. Yes, for more than three years passed trains have been running on London street, locomotives attached propelling them for nearly three-quarters of a mile of said street, and to the northern terminus of said road at the Elizabeth River; no opposition thereto, that I have ever heard of, has been made by the corporate authorities or individuals in court.

5th. Question by same. What are the widths of London and High streets, respectively, and over what distance in High street do the locomotives run?

Answer. London street is sixty feet wide, and High street is one hundred feet wide; the locomotives run the entire length of High street, which is about three-quarters of a mile in length.

Sixth. Question by same. Please state whether either or both of these streets have buildings for residence or business along either side of them; and if so, to what extent.

Answer. High street is one of the most populous streets in Ports-

mouth; for the distance of half a mile the buildings are quite compact; the western part of the street is occupied chiefly by family residences; the eastern part of the street is one of the most business portions of the city; London street is quite well built up for half a mile, and the buildings are chiefly family residences.

7th. Question by same. Please state all you know as to the frequency with which trains with locomotives pass through either or both of these streets, and as to the amount of freight and number of passengers annually transported on them daily or nightly.

Answer. It would be impossible to state how frequently on the London street track; I frequently hear the trains from my house, and they seem to be passing every hour in the day, and often at night; on the High-street track they pass oftener than on the London-street track; as to the amount of freight I do not know—very large amounts of cotton and other freight, however, pass over the tracks on both streets; I have no means of knowing the number of passengers.

8th. Question by same. Do you know anything of the use of locomotive-engines and trains of railroad cars in the streets of the city of Norfolk? If so, please state all you know as to the locality in which they are so used, both as to the density of the population and buildings of the streets in which they are used, and the frequency of their passage, as well as the other uses for business purposes or otherwise which are made of those streets.

Answer I know that the Atlantic, Ohio and Mississippi Railroad
76 has a railroad track running through nearly the entire length of Wide Water street and Market square, a distance of about a mile; locomotive-engines and cars are used on that track its entire length; on that street the population is very dense and the buildings compact; it is one of the chief business streets, if not the chief, in Norfolk; as I do not reside in Norfolk I cannot tell how frequently they pass. I visit that city in the forenoon of every week day, and often see the trains propelled by locomotives passing and repassing along that street, which is about sixty feet wide.

9th question by same. Have you been a member of the Virginia legislature; and, if so, during what periods of time; and what railroad companies authorized to construct railroads within the corporate limits of any city do you now remember to have been incorporated by that legislature while you were a member of it? Please state whether in the discussion of those acts of incorporation in the legislature you have ever known the right of those companies to use locomotives in the streets of those cities, under the authority of their charters, denied or disputed?

Answer. I was a member of the Virginia legislature, commencing with session of 1833–'4, and ending with session of 1846–'7, with an interregnum of three years, viz, of the sessions of 1835–'6, 1836–'7, and 1841–'2. I was also a member of the sessions of 1871–'2 and 1872–'3. I do not now remember what railroad companies were incorporated while I was a member of the legislature, except the Richmond, Fredericksburg and Potomac Railroad Company, and the Richmond and Danville Railroad Company. I never heard the right of those companies to use locomotives in the cities under their charters discussed at all.

The counsel for the appellee reserves objection to the admissibility of the eight foregoing questions and answers thereto, on the ground of incompetency and irrelevancy.

And further this defendant saith not.

SAM'L WATTS.

Deposition of Thomas P. Atkinson, taken 4th March, 1874, (marked "No. 9."

1st. Question by counsel for appellant. Have you any knowledge of the date of the completion of the Petersburg Railroad within the corporate limits of the city of Petersburg, and of the commencement of the use of locomotives and trains upon that road within those corporate limits; and in what streets, if any, of that city were they used?

Answer. I cannot say the exact year when it was completed, but I road on that road in one of their cars drawn by a locomotive-engine from the terminal station of that road, on Washington street in
77 that city, as at present located, accompanied by other members of the legislature, on Christmas Day 1832 or 1833, to Bellfield station, some forty miles from Petersburg, and back again; that being the first trip made to the last-mentioned point. I no not remember what other streets were used by the track except Washington street.

2nd. Question by same. Do you know whether locomotives and trains have been since then run on that railroad to and from the same terminal station in Petersburg?

Answer. They have regularly up to the present time.

3rd. Question by same. Were you ever a member of either house of the Virginia legislature, and, if so, during what years?

Answer. I was a member of the house of delegates from 1827 to 1830; was elected to the senate in the spring of 1832, and remained there until December, 1834, when I resigned.

4th. Question by same. During the last of the periods just named by you the Richmond, Fredericksburg and Potomac Railroad Company was incorporated by the legislature; in the discussion of that charter in the senate did you ever hear the right of that company to use locomotives on its roadway in the city of Richmond denied or disputed?

Answer. I don't remember that I ever heard it mentioned.

(All exceptions to the competency or relevancy of the above questions and answers reserved by counsel for the appellee.)

And farther this deponent saith not.

TH. P. ATKINSON.

Deposition of Ch's F. M. Garnett, taken 4th March, 1874, (marked "No. 9.")

1st. Question by counsel for appellant. Where do you reside, and what is your age?

Answer. I reside in Hanover County, Virginia, and am sixty-three years of age.

2nd. Question by same. Did you ever have any professional or other business connection with the Petersburg Railroad Company; and, if yea, in what capacity and during what period of time?

Answer. I was an assistant engineer on the construction of the Petersburg Railroad from its commencement in 1830 to its completion in 1833, and for some months after its completion.

3rd. Question by same. Do you know whether at the time of its completion, and since, railroad trains propelled by locomotive-engines were used on its railroad within the corporate limits and within the streets of Petersburg, to and from its terminal station on Washington street in that city?

Answer. Yes: they were so used from the time of its completion and since, and no other motive-power was ever used on that road within the city.

78 (All right of exception to the above questions and answers on the ground of incompetency and irrelevancy reserved by the counsel for the appellee.)

And farther this deponent saith not.

CHA'S F. M. GARNETT.

(No. 10.)

The depositions taken for the plaintiffs and defendants in the chancery suit now depending in the Richmond chancery court between Henry Miller and others, plaintiffs, and the Richmond, F. and P. R. R. Co., admitted by the attorney for the city of Richmond to be read in evidence in this case precisely as if they had been regularly taken therein, but excepted to as incompetent and irrelevant.

Deposition of P. E. Duprey, taken on the 11th day of April, 1874, (*marked "No. 10."*)

1st. Question by plaintiff's counsel. Where do you reside, and what is your business?

Ans. I reside on Grace street, in Richmond. My place of business is on Broad street, between 4th and 5th. I am a druggist.

2nd. Question. How long have you been doing business on Broad street? Are you a member of the Broad street association?

Ans. About seventeen years, I think; yes, I am.

3rd. Question. Are engines propelled by steam now used by the defendants, the R., F. and P. R. R. Co., on their railroad on Broad street or not?

Ans. Yes.

4th. Question. How often in the course of the day does a steam-engine pass up or down Broad street on the said railroad?

Ans. I should say some eight or ten times a day.

5th. Quest. Has the northern and southern mail train, which was carried formerly on the Fredericksburg R. R., on Broad street, been taken away?

Ans. I think it has, but the engines are still brought back to the depot on Broad street.

6th. Quest. By what route and on what R. R. is the northern and southern mail trains now carried to and from the crossing on James River?

Ans. By the Fredericksburg Railroad until it strikes the connection track in the western part of the city, which leads to the Petersburg depot, and thence by that connection track.

79 7th. Question. Do you know at what rate of speed the said engines and cars propelled by them usually travel on the R. R. in Broad street?

Ans. I have no way of judging, but my impression has always been four miles an hour, because the law said four miles an hour. I never timed it.

8th. Ques. What has been the effect of using steam-engines on Broad street upon the business of that street generally and upon your business particularly?

Ans. I think it has driven a great deal of business from Broad street. I think my business would be greatly improved if the R. R. were not on Broad st.

9th. Ques. What, in your opinion, would be the percentage of the improvement in your business?

Ans. I couldn't say, but I should reckon some twenty or twenty-five per cent. per annum. I cannot say positively.

10th. Quest. What is the amount of your business in a year?

Ans. Some fifteen or twenty thousand dollars, I suppose. I am not precise.

11th. Ques. Is or not the injury, in your opinion, as great upon the average to the business of other persons residing on Broad street as to yours?

Ans. I should say it was.

12th. Quest. State, if you please, whether you have seen any injuries occasioned by the steam-engines to persons in carriages on the street.

Ans. I have seen horses attached to waggons and carriages run away, having been frightened by the engines, seriously damaging vehicles and the occupants.

13th. Quest. Do you know of anybody who has been killed or wounded?

Ans. I don't remember the names of any at this time.

Cross-examined:

1. X Q. By Jno. O. Stegar, esq. How do you ascertain that the use of steam-engines on Broad street has driven business from it?

Ans. Because my patrons have told me that they were afraid to drive their horses on Broad street. Those patrons who live on the north side of Broad street don't wish their nurses, who have charge of their children, to cross the street. The nurses are usually the bearers of orders.

2. X Q. What proportion of your patrons have told you that they were afraid to drive their horses on Broad street?

Ans. I can't say positively, but a great many of them have. Many who live in the country, and many of them are physicians who live in the city.

3. X Q. Can't you say whether one-half, one-third, one-fourth, or one-tenth of your patrons have told you so?

Ans. I can't say positively, sir.

80 4. X Q. Are there not many carriages, hacks, and vehicles of all sorts drawn by horses daily passing up and down Broad street?

Ans. Yes, sir.

5. X Q. How many physicians are there in Richmond who refuse to use Broad street with their vehicles drawn by horses?

Ans. I don't know, sir.

6. X Q. What proportion of your business is derived from orders brought by nurses with children in their arms?

Ans. I can't say.

7. X Q. If you do not know what proportions of your patrons are afraid to drive on Broad street with their vehicles, nor what proportion of your business is derived from orders sent by nurses, how do you arrive at the conclusion that your business is reduced by the use of engines on Broad street twenty-five per cent.?

Ans. I have no positive way. As a general idea on that subject I have long thought that it was injurious to my business.

8. X Q. Was not the road in existence and its cars propelled by steam-engines on Broad street when you commenced business on that street seventeen years ago?

Ans. Yes, sir.

9. X Q. Why, then, did you locate your business on that st.?

Ans. I was located there by my guardian as clerk, and I then purchased the interest of my employers, and have not been in business any where else in Richmond.

10. X Q. Do you own the house in which your business is carried on? If so, state when you purchased it.

Ans. I do own it. I purchased it about two years ago.

11. X Q. Why did you continue your business on Broad street so long (seventeen years) when the use of engines on Broad street was so seriously injuring your business?

Ans. Because I have always been identified with that part of town, and have always cherished the hope of getting rid of the railroad.

12. X Q. Would it not have been better to have moved your business to some other location than to have remained on Broad street when so large a percentage of your patrons were afraid to come on Broad street with their vehicles and nurses, and when, in consequence of the injury resulting from the use of the road, your business was not as large as it would have been by twenty-five per cent.?

Ans. Perhaps it would have been better, but I had greater interest on Broad street, between 4th and 5th, than anywhere else. My wife's property is all on that block.

13. X Q. What had your remaining on Broad street and conducting your business as a druggist to do with your wife's property?

Ans. The improvement of my business would result in the improvement of my property, I should reckon.

14. X Q. How did you expect any improvement in your business with such an incubus upon it as the Broad street railway?

81 Ans. We don't expect much improvement in our property as long as *as* the street is used for steam-engines. We don't expect so much improvement in our business as long as the same nuisance exists.

15. X Q. I still wish to know how you expected by remaining on Broad street and conducting your business there to improve your property on Broad street?

Ans. I have always made a living there despite the railway, but I believe my business and my property would both increase if the railway were not there.

16. X Q. Has your business on Broad street during the past seventeen years been profitable?

Ans. I reckon it has.

17. X Q. Is it not greater now than it was when you commenced seventeen years ago?

Ans. Seventeen years ago I commenced as a clerk in the establishment, and only since the war have I owned the business. My business is not so good now as it has been.

18. X Q. Do you attribute the diminution in your business to the influence of the railroad on Broad street?

Ans. I do, to a great extent. I think since the use of the steam-engine known as "Agent," the damaging effect of the steam-engines has been greater.

19. X Q. Do you mean to say that the conduct of the trains on the R. R. was better managed when you first commenced business on Broad street than now?

Ans. I should say that it was.

20. X Q. Please state in detail in what respect the management of the

road, when you first commenced business on Broad street, was better than it is now, and less injurious to business and property on Broad street?

Ans. I do not think as many engines passed up and down the street then as now. Since the city council prohibited the stopping of engines and cars on the street, that fact necessitated the company using an engine of peculiar construction to overcome the greater curve of the road, which is almost constantly escorting trains up and down the road or street.

21. X Q. Is there not a great deal more business done on Broad street now than when you commenced business there seventeen years ago?

Ans. I have no doubt there is an increase of business, but I don't know whether there is or no.

22. X Q. Do you not yourself do more business now than was done by your predecessors in the same house seventeen years ago?

Ans. I do not.

23. X Q. Has not real estate on Broad street greatly increased in value in the last seventeen years?

Ans. I reckon property is worth more all over the city, but not in the same proportion on Broad street.

82 24. X Q. Question repeated.

Ans. I think it has increased some on Broad street, but not in the same proportion that it has on other streets. I had occasion, as trustee, to sell a piece of property a few years ago on Broad street, the purchaser thinking it would be a good investment, provided we could ever get rid of the railroad from Broad street; this purchaser was M'r Elijah Baker.

25. X Q. Do you know enough of the management of the R., F. and P. R. R. Co. to say whether the running of their engines and trains on Broad street is conducted with care and skill or otherwise?

Ans. I should reckon it was conducted with care and skill. The officers of the road are all gentlemen, and skilled in their business.

26. X Q. During the last seventeen years that you have been familiar with the railroad on Broad street, have the accidents on that road been greater or fewer in number than on similar roads elsewhere?

Answer. I know nothing about accidents on other roads.

27. X Q. During the last seventeen years how many accidents have occurred on the Broad st. railroad within your knowledge?

Ans. I don't know how many, but that accidents have occurred is familiar to us all.

28. X Q. You have stated, as within your knowledge, that horses attached to vehicles have been frightened by the engines on the road and have run away and injured the vehicles and sometimes the persons; were such accidents frequent or not?

Ans. They were frequent.

29. X Q. What do you mean by frequent; do you mean once a week, once a month, once a year, or ott'ner?

Ans. Ottener.

30. X Q. Do you mean by the word ottener that such accidents happen ottener than once a week?

Ans. I should say that they happened ottener than once a week.

31. X Q. Will you be good enough to give the instances within the last four weeks?

Ans. I don't recall to mind any at this time.

32. X Q. Do you know of your personal knowledge many cases in

which horses have been frightened by the engines of the railroad? Might they not have been frightened by other causes, as is it an unusual thing for horses to be frightened on other streets in Richmond where there is no railroad?

Ans. I do know of many cases. They might have been frightened by other causes, but in the cases I allude to they were frightened by the engines. I think runaway accidents are more frequent on Broad st. than in other parts of the city.

83 Redirect examination:

14. Ques. Is not Richmond a much larger city now than it was when you came to do business in Richmond, and is it not much more populous?

Ans. It is.

15. Ques. Is not Broad street also much more populous than it was at that time, and much more thickly built up?

Ans. It is, sir.

16. Ques. Is there, therefore, not much more danger now on Broad street from engines than when it was much more sparsely populated?

Ans. I should think there was greater danger, and there is a greater number of engines constantly passing now than there was formerly.

And further this deponent saith not.

P. E. DUPUY.

Deposition of Peter W. Grubbs, taken on the 11th day of April, 1874, (marked "No. 10.")

1st. Quest. Are you familiar or not with the influence and effect of steam-engines on Broad street?

Ans. I am somewhat.

2. Q. Please state what your knowledge and experience on that subject are.

Ans. I was a resident on Broad street at the time when engines were first introduced in the city. They were always a source of annoyance and productive of danger in fright'ning horses and otherwise.

3. Q. In your opinion, is the business of Broad street and the real estate adjacent to the street injured or impa'red by the use of steam-engines on the R., F. and P. R. R.?

Ans. Although anxious, when a resident of Broad street, for the removal of the engines, because of the annoyance, I was not then satisfied, nor am I now, that injury has resulted to the business or the value of property lessened thereby on Broad st.

4. Q. What did the annoyance consist of of which you have spoken?

Ans. Frightening horses principally to vehi*c*kles.

5. Q. Have you ever known carriages and vehi*c*kles to be injured and persons killed?

Ans. I have known carriages broken and persons killed, resulting from accident occasioned by the passage of locomotives on the street.

6. Q. Do you not believe that annoyances, such as you have described, are not only calculated to injure but must injure the business and property on the street subject to them?

Ans. It would seem so; but the result, which has been a con-
84 stant increase in business and the large increase in the value of property on Broad street, has not shown this to be so.

7. Q. You say that the increase of business, which has been constant, "would seem to indicate" that the R. R. engines have not been injurious

to the business and property of Broad street. Do you mean to say by that that the increase of business and value of property on Broad street has been occasioned by the R., F. and P. R. R., and not by the increase of the population of the city and its general prosperity?

Ans. I do not attribute the increase of the business to the presence of the road on Broad street, but I say that business has increased in spite of its presence; I repeat the fact, business has increased and property largely increased in value.

8. Q. Please to state whether Broad street, in common with all Richmond, is not much more populous now than when you resided on Broad street, and whether, in your opinion, the same causes which have produced an increase of population and greater prosperity in the city would not have produced more prosperity and a greater increase in the value of real estate upon that street than has occurred, if the street had not been subject to the annoyances which you have described.

Ans. The population and value of property in the city have greatly increased since I was a resident on Broad street. I am unable to say whether the increase would have been greater on Broad st., either in population or value of property, had there been no railroad. I was opposed when on Broad st. to the use of engines because of the annoyance and danger, and believe I should be now, but am not satisfied that the value of property or business is decreased thereby.

9. Q. Are you not a member of the Broad St. Association, which was organized for the purpose of preventing steam-engines in the street, and did you not attend the first meeting at which the officers were elected and take part in it? If you are, state why you are a member of it.

Ans. I am a member of it. I was present at the first meeting rather by accident, and called to preside at that meeting, and was made an officer of the association against my will and under protest, stating that I had no personal interest in property on Broad street.

10. Q. Do you or not concur in the objects of that association? Have you not been always aware that your name was used as a member in two papers presented to the council of Richmond? Have you expressed any dissent to the use of your name to the association or any officer of it?

Ans. I have not taken interest enough in the subject to inform myself, not having attended a single meeting since the night of the organization. I protested against my election, and never thought that I ought to take an active part. I now am satisfied that I ought to have resigned my position in the association.

85 11. Q. Are you a member of the house of Grubbs & Williams, real-estate auctioneers in Richmond?

Ans. I am.

12. Q. Do you know what has been the relative rise of real estate, unimproved as well as improved, upon Grace st. and Broad st., in Richmond?

Ans. Both have been largely improved. The property on all the streets south of Broad has increased much more rapidly than on corresponding streets north of Broad.

13. Q. To what do you ascribe this difference in the increase in value of property south of Broad over that north of Broad?

Ans. There are several reasons—one, its greater convenience to the lower and principal business part of the city; another, it is better drained, therefore most desirable for residences, and owned by persons of wealth able to improve their property, and by the presence and passage of locomotives down Broad st.

Cross-examination:

1st. X Q. Has or has not the R., F. and P. R. R. Co. contributed largely to the prosperity and business of Richmond?

Ans. I believe that upon general principles all R. R's coming into a city contribute to the prosperity and business of a city, and that this, like all the rest, has contributed greatly to the prosperity of this city.

2. X Q. Have you examined the assessed value of any property made in 1836 on Broad street, and also made in 1873? If so, state what property and the assessments made for those respective periods.

Ans. I was asked to do so, but could not find any assessment-books further back than 1845; in 1845 the property on Broad street which I was requested to examine, being M'r Lyons', 166 feet, was assessed at about $18 per foot without improvements; tax on the same, $4.80; it is now assessed at $125 a foot without improvements. The improvements in 1845 were assessed at $1,500; the improvement was an old wooden building, and the lot was used as a wood-yard; the improvements now consist of several brick tenements assessed at $17,500, ground and improvements, $38,300. I took that from the assessment-books. (M'r Lyons, being present, states that the improvements cost him over $20,000.)

Redirect examination:

14. Q. At the time that you have spoken of, to wit, 1845, was not fully half, if not more than half, of the square which is immediately below M'r Lyons, which is on the east side of 4th, extending almost to the corner Le Mosy House, at the corner of 5th and Broad, either vacant or occupied by old wooden buildings of little value; and was not the same true of the opposite side of the square, or north side of Broad st., up to and including the ground occupied by the houses now owned by Martha Downey; and was not the same true of a large portion of the square now occupied by M'r Breeden; and was not the same true all the balance of the square in which the property of M'r Lyons is up to the corner of 3d Broad?

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Ans. The first square alluded to had on it few buildings of little value, part of it being vacant; the second square alluded to had on it two brick buildings, one at each corner; the third square alluded to had a good portion of it vacant, and all the square above the property of M'r Lyons was vacant up to 3d st.

15. Q. Is not the property on Marshall st. below the point at which the steam-cars stop of more value than that above?

Ans. It is.

16. Q. Since the time you have spoken of, has not the tendancy of the retail trade been to locate on Broad street?

Ans. It has.

17. Q. Would not this tendancy of the retail trade to locate in Broad street have been greater but for the existence of the R., F. and P. R. R. Co. in Broad st.?

Ans. I do not know. I think the annoyance has had a tendancy to injure the trade, but there may have been counteracting circumstances.

18th. Q. You have been asked, on cross-examination, if this railroad does not contribute greatly to increase the prosperity and business of the city; is it not a fact that this R. R brings less freight to the city than any other leading line of R. R. leading into the city?

Ans. I believe it brings less freight into the city than any other leading line of R. R. coming into the city, but there are advantages to the city in affording facilities to the people on its line, and the best and quickest line to Washington.

And further this deponent saith not. P. W. GRUBBS.

Deposition of E. V. Breeden, taken 13th of April, 1874, (No. 10.)

1st. Question by plaintiff's counsel. Where do you reside, and what is your business?

Ans. I reside in the city of Richmond. I am engaged in the retail dry-goods business on Broad street, and have been ever since 1850, with the interruption of two or three years.

2. Quest. Are engines propelled by steam now used by defendants, the R., F. and P. R. R. Co., on their R. R. on Broad st. or not?

Ans. They are.

4th. Q. How many engines pass up and down that road through Broad street in the course of the day?

Ans. I have never counted the number, but I should suppose between eight and twelve.

87 5. Q. What has been and is the effect of the passage of these engines through the street upon the general business of the street, and upon the value of the property bordering on the street, and upon your business and property especially?

Ans. I think the effect upon the general business of the street is injurious, damaging in value to my property, and lessons the volume of my business.

6. Q. Do you own the property in which you do business on Broad st.?

Ans. It is property inherited from my father, which my mother holds as part of her dower. I inherited it in common with the other heirs of my father.

7. Ques. Do you own or are you interested in, as part owner, any other property on Broad street?

Ans. I own one piece of property on Broad st.

8. Q. What is the total fee-simple value of all the property in which you are interested on Broad st.?

Ans. I think between thirty and forty thousand dollars.

9. Q. To what extent is your business injured by the running of these engines through the street?

Ans. I have no means of ascertaining the percentage of injury, but I think it considerable.

10. Q. Are the northern and southern mails or the northern and southern through passengers carried now on the road through Broad st.?

Ans. They are not: the train diverging towards the river, a little below Elba Park, passing over what is called the connection road to the Petersburg depot.

11. Q. What passenger trains, if any, now passes over the road on Broad st.?

Ans. What is called the accommodation train, which is for local travel, and goes, as I understand, as far as Milford depot, in Caroline Co., no further, and sometimes extra trains from time to time for excursion parties, &c.

12. Q. Do any freight trains pass over that road on Broad street now?

Ans. Freight trains do pass over that road on Broad street.

13. Q. How many a day or a week?

Ans. I have never taken the pains to count them, but I should suppose from three to six freight trains per day and some days more.

14. Q. Do you know what kind and amount in value of freight they bring?

Ans. I have no well-defined idea of the amount and value, but I think the freight is of all kinds, farm products as well as assorted merchandize; much more of the latter.

15. Q. Is there not a large engine called the "Agent," which is run over that road through Broad st. very often without any train attached to it?

Ans. There is an engine of apparently great power of that name
88 which does run often over the road on Broad street without any train attached.

16. Q. Do you know for what purpose it is thus used?

Ans. I think it is kept in the depot building, on Broad street, to draw trains back and forth from the point of connection with the connection railroad to the depot on Broad st., being of such construction as to admit of more easy passage on the curve on Broad street: I believe it is used to assist the trains in going to and returning from the Petersburg depot, also.

17. Q. Do you know whether or not horses have not been very often frightened by the engines on that road, and thereby made to run away with carriages and other vehicles, to the injury of the vehicles as well as of persons?

Ans. I am sure horses have been often frightened by the passage of engines on the street, and have heard of many cases of horses running away and of damage to vehicles of various sorts, and also of many injuries to persons.

18. Q. Have you any knowledge of the occurrence last summer, when the horses in a street-car were frightened and M'r Clemmitt was killed?

Ans. I was not an eye-witness of the occurrence, but it was a thing of public notoriety, and great regret was felt on the part of the people on account of the killing of M'r Clemmitt.

19. Q. Have you any personal knowledge of the killing or wounding of any person by the cars, or by the running away of horses frightened by the cars on Broad st.?

Ans. I do not now remember to have witnessed the killing or wounding of any person; but I have heard, immediately upon the occurring, of many persons either killed or wounded during the series of years.

(The counsel for the defendants excepts to the last answer, because the witness undertakes to give his hearsay testimony.)

20. Q. Is it or is it not a fact that many persons are deterred from going into Broad st. in carriages by the engines and fear of having their horses frightened?

Ans. I am satisfied that many persons are prevented from going into Broad st. in carriages on this account, and have often heard my patrons regret the danger of so doing.

(The counsel for def'ts excepts to so much of the above answer as gives the mere opinion of the witness instead of giving fact.)

21. Q. Has not Broad street great advantages for the retail trade over any other street in Richmond, if the railroad were out of it?

89 Answer. It would, in my opinion, have decided advantages, if the railroad were out of it.

22. Q. Please state the difference in value of property north of Broad street and south of it, and why property south of it is more valuable than that north of it.

Answer. I have known of the sales of special pieces of property on both sides of Broad street, within twelve months, situated not far from or parallel with each other, the relative prices of which in favor of the property on the south side were as about forty dollars to one hundred and forty dollars per front foot.

23. Q. Is not this difference of value, spoken of by you, largely due

to the fact of the railroad being on Broad street and the running of engines to and from the depot on the same?

Answer. I am convinced that this difference of value is not altogether due to this cause, but in a large measure due to it.

24. Q. Please state in regard to other property, north of Broad, unaffected by the railroad, how it compares in value with that property affected by the railroad—for instance that east of 8th and 9th streets.

Answer. I do not know of any sales of property north of the railroad and east of 8th or 9th streets, for some years, but I am satisfied that property east of that line would bring much fuller prices than property west of it. I would myself, if desiring to purchase property, pay much larger prices for property on the east than I would for that on the west of that line.

25. Q. Is not this difference in value due greatly to the fact that parties living in that part of the city, north of Broad street and east of Eighth street, have easier access to the business parts of the city, and attended with less danger by vehicles or otherwise than parties living west of Eighth street and north of Broad?

Answer. I think the difference in value is due, in a great measure, to the absence of the danger from the railroad trains.

Cross-examination by Mr. Steger:

1st. X Q. Are you not a member of the Broad Street Association, and is not this suit conducted at the expense of that association?

Answer. I am, I believe, a member of that association, but I don't know at whose expense this suit is instituted.

(The counsel for the plaintiffs excepts to as much of the above question as relates to whose expense this suit is conducted.)

2d. X Q. What is the object of the Broad Street Association?

Answer. The object, I think, of the Broad St. Association was to call the special attention of the citizens to the injury done to the street by the passage of trains, and, if possible, by joint influence and action, to have the road removed from the street by legal measures.

90 3d. X Q. How long have you been in business on Broad street, either on your account or for some other person?

Answer. As I have already stated, ever since 1850.

4th. X Q. Be good enough to state whether or not the value of property on Broad street has increased or diminished in value since 1850.

Answer. I am sure it has increased considerably in value since that time.

5th. X Q. Has not the business in Broad street during that period increased very much?

Answer. I am doubtful whether the whole am't of business done on Broad st. now is as large as that done on the street at that time.

6th. X Q. Were there not many vacant, unimproved lots on Broad st. when you knew it in 1850?

Answer. There were very few unimproved vacant lots at that time from 3d to 9th st's fronting on Broad st.

7th. X Q. Is not Broad st. built up very generally from 8th to 3d st. at this time?

Answer. It is.

8th. X Q. Are not the business houses on Broad st. at this time very generally occupied as places of business?

Answer. They are, I believe.

9th. X Q. Is not Broad st. very popular and much sought after as a place for retail business at this time?

Answer. A considerable retail business is done on Broad street, by reason of its proximity to the resident portion of the town and of its being level with the upper part of the town, whereas its only competing street (Main street) is separated from the upper town by a difficult hill. Whether it may be said to be popular or much sought after by business-men I am not prepared to say.

10th. X Q. Are there any vacant business houses on Broad st. at this time? If so, state how many.

Ans. I am not certain, not having examined with a view of answering this question.

11th. X Q. If there had been many, would not the fact have attracted your attention?

Ans. I am sure it would.

12th. X Q. Are there not now very many more retail business-houses on Broad st. than there were in 1859?

Ans. I think there are very few more.

13th. X Q. Your have stated that you own a lot on Broad st. When did you purchase it?

Ans. I inherited it from my father's estate in 1866. I got possession of it in 1867, when the partition was made.

14th. X Q. You have stated that you think your business is injured considerably by the use of the engines upon the road, but that you have no means of ascertaining the extent of the injury. Please give in detail the reasons why you think you have been injured considerably, and the facts upon which you base your opinion.

91 Ans. I think so, from the number of patrons who have expressed to me fears of coming upon the street in their vehicles, both from the town and from the country, as well as the danger of passing in person across the track on the part of ladies, sometimes accompanied by nurses and children.

15th. X Q. How many of those patrons that you speak of stopped dealing with you on that account?

Ans. I have no means of ascertaining that, but I am convinced that the patronage of many has been very considerably lessened to my house on that account.

16th. X Q. Can you name a single patron who has stopped dealing with you on that account?

Ans. I cannot name one who has entirely stopped dealing with me on that account, but a lady, the wife of one of our wealthiest citizens, M'r's Gen'l Bradley Johnston, stated that she had sometimes also given orders to her coachman never to drive on Broad street, and I am fully satisfied that we have lost a good many dollars of her trade thereby.

17th. X Q. How far is M'r Bradley Johnston's residence from your store?

Ans. About nine squares.

18th. X Q. Has she since that time stopped dealing at you' house?

Ans. I do not think she has, but I think I have not seen her there since that occasion, which was about three weeks ago.

19th. X Q. Are not the upper parts of the business-houses on Broad street very generally occupied by families?

Ans. I think they are mostly occupied by females engaged in dress-making and kindred employments, but a considerable number of the rooms over the shops are occupied by young men as sleeping apartments; a very few families not in business, and some of the parties doing business there have their families in the upper stories of the houses.

20th. X Q. You have stated that in consequence of the running of the engines on the street horses have been very often frightened and run away, to the injury of the vehicles and sometimes of persons. Do you make this statement upon your own knowledge or upon the statements of other persons?

Ans. Mostly upon the statements of other persons, not standing on the street much of the time, being occupied in my business-house; but I have seen instances of vehicles damaged from these causes a good many times.

21st. X Q. How many instances of the kind can you recall in the last twenty-four years?

Answer. I cannot recall clearly more than three or four, but I am sure that I have heard reliably of a great many more.

22d. X Q. Can you state the names of the persons whose vehicles or themselves have been injured in the instances which you can recall?

92 Answer. I cannot remember the names.

23d. X Q. Were you at the time aware of the circumstances under which these accidents which you can recall, occurred? Were they cases where the horses were not well broke, or where the driver recklessly attempted to force them into proximity with the engine?

Answer. I cannot state what was the condition of the training of the horses, nor the management on the part of the driver; but I know I was convinced that these accidents were caused by the horses being frightened by the passing trains.

24th. X Q. Are there not a large number of vehicles, of various sorts, drawn by horses, passing up and down Broad street every day?

Answer. A good many necessarily, but a large part of the produce and merchandize hauled to and from the stores on Broad street is carried on the parallel streets, to avoid as much as possible the engines.

25th. X Q. Is not Broad street, at this time, a desirable place for retail business?

Answer. I consider it so; but far less so than it would be were the railroad removed.

26th. X Q. You do not consider that your business in the last twenty-four years has been so much injured by the use of the street with engines to justify your removal to some more favored location?

Answer. I entered into business on Broad street when a youth, in the employment of others, and in that capacity, in a series of years, I made the acquaintance of a good many persons in town and country, customers of the house; and beginning business for myself after the war, and observing the large competition in my line of business on Main street, I avoided that, and deemed it to be my interest to establish myself on Broad street, to more surely secure the patronage of the acquaintances made there in so many years.

27th. X Q. You state that you have known the sales of special pieces of property north of Broad street and south of it, the relative prices of which, in favor of the property on the south side, was as forty to one hundred and forty dollars. Will you state the precise locality of that property?

Answer. The property that I alluded to on the north side was a vacant lot on the southwest corner of Clay and First streets. That on the south side of Broad street was the lot on the southeast corner of Grace and 1st street.

28th. X Q. Do you not know the fact that the property on Grace street, which you refer to, is one of the most desirable building lots in

the city of Richmond, situated on one of the most favorite streets of the city, surrounded by the most desirable neighborhood, and in a part of the city most sought for by wealthy capitalists for residences?

Answer. I do not consider the property more desirable than property above and below it on the same and adjacent streets, and in fact not as much so. I consider it a favorite part of the town, but not more sought after than other portions of the town.

93 29th. X Q. Do you mean to say that the west end of Grace and Franklin streets are not more sought after by wealthy capitalists for residences than other parts of the town?

Answer. They are sought after more for residences by wealthy citizens, I think; but the popularity of that portion of the town, I think, is considerably increased by objections caused to the north side of Broad street from the location of the railroad thereon.

30th. X Q. Is not a lot on the corner of Clay and First streets more remote from the business part of the city than one on the corner of Grace and First st's; not as elevated and well drained, and surrounded by a much more undesirable population?

Answer. It is very slightly more remote—say one or two squares—it is well enough drained to be desirable for residences, and the neighborhood is a very genteel one, but the residents are not generally people of as large means as those on Grace street, and they doubtless buy lots there because they are much cheaper than those on Grace street.

31st. X Q. Do you not know the fact that the tendency of the improvement of property in Richmond is much greater up the river and to the westward than it is to the north of Broad street, independent of any influence that you may suppose the railroad to have upon that question?

Ans. I do know that the value of the property has been increasing much more largely to the west of the railroad, and is now much greater than that north of the railroad, and I attribute the difference largely to the location of the railroad on Broad street, shutting the residents off in a large measure from the business section of the town.

32d. X Q. You have been examined with regard to the property north of Broad street and east of Eighth street, and have stated that the property thus located was much more valuable than that which was affected by the railroad. Is it not a fact, that on Marshall and Clay streets, east of Eighth street, were located the residences of some of the most distinguished and prominent citizens of Richmond; and that, in addition to that attraction, it was a very retired and quiet part of the city, while it was very convenient to the centre of business?

Answer. I think such was the case, and that a difference can be easily recognized in the character of the buildings and the wealth of the occupants above and below , about the location of a line drawn from the depot of the railroad.

33d. X Q. Can you say from your knowledge that the property on Marshall and Clay streets, east of Eighth street, has, since the establishment of the railroad on Broad street, increased in value in a greater proportion than the property on Broad street, which is west of Eighth street, which is affected by the railroad?

Answer. I do not know; my recollection not going back far enough.

34th. X Q. Has it increased in a greater proportion within the last 10 years?

94 Answer. I can't remember the sale of any property in the locality west of 8th street.

35th. X. Q. Can you undertake to say that the property on Marshall

and Clay st's, east of 8th st., which is unaffected by the R. R., has in the last 20 years increased in value in a greater proportion than the property on the same streets (Clay and Marshall) between 8th and First streets?

Answer. I am satisfied that it has.

36th. X Q. Are you a real-estate agent, and familiar with the prices of real estate?

Answer. I am not a real-estate agent, but I think myself tolerably familiar with the prices of property, especially on Shockoe Hill.

37th. X Q. Are there any other railroads in the city of Richmond whose steam-engines run on the public streets? If so, name them.

Answer. There are: C. & O. R. R., R. & D. R. R., R., Y. R. & C. R. R.—all of which roads enter the city, but are in districts sparcely settled, and where there is very little business interest.

38th. X Q. Isn't that part of the town through which the C. & O. R. R. passes quite populous—inhabited by families, and accidents as likely to occur there as on Broad street, which is a wider one?

Answer. It does seem to be inhabited by negroes and white people of the poorest class, many of whom doubtless make their living by the proximity of the R. R.

39th. X Q. Is there not as much traveling in vehicles drawn by horses or mules on Dock street, along which the R. & D. R. R. passes, as on any other street in the city of Richmond?

Answer. Not having the opportunity to observe it, I am unable to answer.

40th. X Q. What is the number of members in the Broad St. Association?

Answer. I am unable to say, but I am sure the number of active members is small.

Redirect examination:

26th. Qr. You have spoken of eligibility of Broad street in points of grade, &c.; please state whether, in your opinion, it would not become a street for fashionable driving if it were not occupied by the R. R. and, if so, would it not from that fact have its business very much increased?

Answer. I am satisfied it would.

27th. Q. Has not the population of Richmond increased very much within the last 20 years?

Answer. I am satisfied it has.

Hasn't other parts of the city increased more than Broad st.?

Answer. Yes, sir; I think so.

95 28th. Q. Would not Broad street have improved much more in your opinion if the R. R. and steam-engines had not been there?

Answer. I am convinced that it would, by far.

Recross-examination:

40th. X Q. Has not the R., F. & P. R. R. Co. contributed largely to the increase of the population and business of Richmond?

Answer. I think it has added its share to the business of Richmond.

And further this deponent saith not.

ED. V. BREEDEN.

Deposition of James B. McCaw, taken 13th of April, 1874, (marked "No. 10.")

1st. Q. Please state whether or not you are a practicing physician in the city of Richmond, and how long you have lived here.

Answer. Yes, I am; and have lived here almost the whole of my life.

2d. Q. Please to state whether you are familiar with Broad street, in the city, and whether or not it is one of the finest streets in the city.

Answer. I am; and I think it is.

3d. Q. State whether, in your opinion, founded upon your knowledge and observation, the use of steam-engines upon the R., F. & P. R. R. is or not a nuisance to the public as well as individuals.

Answer. I think so.

4th. Q. Is there or not a general unwillingness to drive unnecessarily in carriages or other vehicles or to ride on horseback upon the said street, from the apprehension from injury from the engines?

Answer. It has certainly been so in my own case, and I think in many others.

5th. Q. Have you or not known of accidents and injuries occasioned by the cars of the said R. R. Co. on Broad st.? If you have, please state them.

Answer. I have had my own buggy injured on one or two occasions from the frightening of the horse; and I have a near relative who was killed on Broad street by being run over by the engine.

6th. Q. State, if you please, whether it has not been a matter of notoriety in the town that many other injuries and accidents have been occasioned by the cars on Broad st.

(The counsel for defendants except to this question, because it asks for hearsay testimony in regard to facts of such notoriety that there must be living witnesses who could prove them.)

Answer. That has been my impression.

96 Cross-examination:

1st. X Q. Doctor, you have said that you considered the use of steam-engines on Broad street a nuisance, as well to the public as to individuals; will you be good enough to define what you consider a nuisance?

Answer. A nuisance, in my opinion, is something offensive and hurtful to the community.

2d. X Q. Isn't Broad street very well built up, d'r, and quite densely populated?

Answer. I don't think it is well built up, but it is well populated.

3d. X Q. From Eighth street to First, are there any vacant lots on Broad street?

Answer. I think not.

4th. X Q. Hasn't *their* been great improvement on Broad street, since you knew it, in houses, population, and business?

Answer. There has been an increase in population; I do not think there has been the same improvement in buildings, comparing that street with the rest of the city, and I do not know whether business has improved or not. From Eighth to First street, on Broad, I recollect fewer new buildings than will be found to have been built in the same space in any other portion of the town.

5th. X Q. How far does your recollection of Broad street go back—how many years?

Answer. Upwards of 40 years.

6th. X Q. When you first knew Broad street were there not a great many vacant lots between 8th and 9th streets?

Answer. There were a good many.

7th. X Q. What was the character of the buildings then on Broad street—were they brick or wood?

Answer. Good many of both sorts.

8th. X Q. Have not the vacant lots been built up since you first knew it?

Answer. Yes.

9th. X Q. Have not most, if not all, the wooden buildings been substituted by brick buildings?

Answer. To a considerable extent.

10th. X Q. Has not the lot, now owned by James Lyons, between 3d and 4th streets, been built up with brick tenements?

Answer. Pretty much, I think.

11th. X Q. Has not the square, below Mr. Lyons', on the paved side, been built up with brick buildings?

Answer. I think it has, partly; I think there were some brick buildings there; it has been very much improved.

12th. X Q. Were not the brick buildings, which were there when you first knew it, dwelling houses, and are not the houses there now used as business-houses?

Answer. Yes.

97 13th. X Q. Were there not many vacant lots in the square, opposite to the Lyons property, and have they not been built up also?

Answer. Yes.

14th. X Q. Dr, you say you have had your own buggy injured on one or two occasions from frightening your own horse. Please state the circumstances and what sort of a horse you had, whether well broke or not.

Answer. I had a horse afraid of nothing but the cars. He ran away once and damaged the buggy to the extent of $75. My driver, a man, was in the buggy. Once backed a buggy upon the sidewalk and broke a shaft, (same horse.)

15th. X Q. Were you present on both occasions?

Answer. Yes.

16th. X Q. When did these accidents happen, d'r?

Answer. Since '65.

17th. X Q. Were you driving along Broad street or attempting to cross?

Answer. Attempting to cross—I never drive up Broad street when I can help it.

18th. X Q. How near was the engine when you attempted to cross the street?

Answer. At the time the horse ran away the engine came out of the lower yard, between 8th and 9th. As my driver was driving diagonally across the street, from 8th to 9th, the locomotive came out of the yard. The second time I was in a store, the horse was standing at the door, and was frightened by the engine passing.

19th. X Q. Did you not know that your horse was afraid of engines at that time?

Answer. Yes.

20th. X Q. Is not a bell invariably rung when the engines move along Broad street?

Answer. Yes.

21st. X Q. Why, then, in the first case, was your horse driven from 8th to 9th streets across Broad street, right in front of the engine, when

he could have been stopped until the engine passed, or might have been driven down Grace to 9th and then avoided Broad street?

Answer. Well, first, because I thought Broad street was a public highway; second, because the horse was in transitu when the engine came out.

22d. X Q. You have stated that you had a near relation run over and killed by the Fredericksburg Railroad, on Broad street—state who that was and whether you were present and know the circumstances as they happened.

Answer. He was my grandfather, Mr. James Brown, j'r. I was there before he was removed from the pavement. I was not there when he was struck.

98 23d. X Q. Are you not in the habit, sometimes, d'r, of driving horses that are a little wild, knowing them to be so?

Answer. Not particularly.

24th. X Q. Have you not had your horses to run away in other streets in Richmond?

Answer. Yes, when the single-tree broke.

And further this deponent saith not.

J. B. McCAW.

Deposition of George A. Hundley, taken 28th of April, 1874, (marked "No. 10.")

1st. Question. Where is your residence and place of business?

Answer. My residence 104 5th street, and place of business 528 Broad street.

2d. Question. What is the nature of your business?

Answer. I am a grocery merchant.

3d. Question. How, in your opinion, has the use of Broad street by locomotive engines on the railroad, as they are now used and have been used for some time, affect' the general business of Broad street?

Answer. In my individual opinion, it has been very beneficial from Fourth street down, and very detrimental above Fourth street. As there has been a railroad on the street ever since I have been on it, I don't know how it would be if it were off. My reason for this opinion is this, that parties who come down on the railroad rarely ever go above Fourth street to make their purchases.

4th. Question. Are not the rents on Broad street and the value of real estate kept down below what they would be if the engines were out of it?

Answer. I can't tell; I don't know the rent of a store on Broad street, except my own.

5th. Question. Have there or not been many accidents on Broad street, since you have known it, occasioned by the cars?

Answer. There have been.

Cross examined by M'r Steger:

1st. X Q. How long have you known Broad street?

Answer. Nearly twenty-eight years.

2d. X Q. During that time has, or has not, the population on Broad street greatly increased?

Answer. I think it has.

3d. X Q. Has not the business on Broad street during that time greatly increased?

Answer. I think there has been some increase *increase* in the main; I think there has been falling off in some individual cases.

99 4th. X Q. Has not the value of property on Broad street during that time greatly increased?

Answer. From 4th street down there has been a marked increase. I don't know anything of the value above; my attention never having been called to it, I am not posted. Being interested in property between 5th and 6th streets, I have paid attention to all sales in that neighborhood, and also to the assessments made by the commissioner.

5th. X Q. Are not the business houses on Broad street much sought after and generally occupied by business men—I mean between Brook avenue and 8th streets?

Answer. There are rarely any vacant houses in my neighborhood; I pay very little attention to those not in my neighborhood.

6th. X Q. State how many vacant houses there are at this time between Brook avenue and 8th street on Broad.

Answer. I don't know of but one at present; there may be others.

7th. X Q. Is not the fact that there are so few vacant houses on Broad street satisfactory evidence, to your mind, that the business houses are much sought after?

Answer. I should think that that is very good evidence that they are.

8th. X Q. Has not Broad street been, for many years, and is it not now, very much frequented by vehicles of various sorts drawn by horses?

Answer. It is, but not as much so as other streets, owing to the fact of engines being run on it.

9th. X Q. Be good enough to state what other streets in Richmond are more frequented than Broad by vehicles of various sorts drawn by horses?

Answer. Main and Cary, also Franklin and Grace, in good weather, in the afternoon.

10th. X Q. Did you ever live on Main street?

Answer. Yes, sir.

11th. X Q. How long, and when?

Answer. From 1847 to 1851.

12th. X Q. You have stated that there have been many accidents on Broad street occasioned by the use of engines on the railroad. Be good enough to enumerate them and when they occurred.

Answer. I have seen many horses frightened by engines and run away, breaking vehicles, &c. This thing has occurred occasionally ever since I have been living on the street. I have known of two deaths occasioned by it; the only two I can remember now. One was a son of Luther D. Ellis, who had his leg cut off, and died from it; the other was a colored boy, who had both legs cut off by swinging on the cars, death resulting from it.

13th. X Q. Did you witness yourself either of the serious accidents above mentioned?

100 Answer. I did; the son of M'r Ellis; it occurred about fifty or seventy-five feet from my front door. I was standing at the door and saw it. It was about ten years ago. He was coming down on the extra train, and while the cars were in motion he attempted to get off and fell under the cars, and his foot or leg was cut off.

14th. X Q. You say you have seen many horses frightened by engines and run away, breaking vehicles, &c. What do you mean by the word "many?" State, as near as you can, how many you have seen.

Answer. I have never kept any account of them. I suppose during the time I have been living on the street I have seen a couple of dozen. I remember two which have happened within the last twelve months. One was a horse hitched to a buggy, which ran down Broad street and

turned into Sixth street. The other was a team of four horses, which became very much frightened; they ran up Broad street, knocked down a post in front of M'r Boschen's, and was stopped on Fifth street. The driver was thrown out and knocked out of his senses for a while.

15th. X Q. Do not the same accidents occur upon some of the other streets of Richmond?

Answer. I have seen horses run away on other streets.

Redirect:

6th. Q. You have testified as to the injurious effects of the railroad on property west of Fourth street. Please compare any recent sales in your mind of property west of Fourth street and north of Broad with property on the south of Broad west of Fourth—say Marshall and Clay streets on the north, and Grace and Franklin on the south, and say what is the cause of the difference.

Answer. During my whole residence here there has been a great of difference. I suppose it is because it is nearer business on the south side, more fashionable, and rather better streets.

And further this deponent saith not.

GEO. A. HUNDLEY.

Deposition of Samuel M. Price, taken the 28th April, 1874, (*marked "No. 10."*)

1st. Q. What is your occupation?

Answer. I am a retail dry-goods merchant.

2d. Q. Has not Broad street great advantages for retail trade, especially for dry goods, on account of its grade, width, eligibility, &c.?

Answer. I think it has advantages for general retail business—not more for dry goods than any other kinds of goods.

3. Q. Have not these advantages and tendencies been very much
101 checked by running steam-engines on the R., and P. R. R. on that street since your acquaintance with the street?

Answer. I have never done business on Broad street, except for a short time, below Ninth street, and am not sufficiently familiar with the retail trade to answer the question.

4th. Q. On what street have you been doing business?

Answer. On Main street.

5th. Q. Please state, then, the effect on business on that street, in your opinion, if there was a railroad propelled by steam to the same extent that there is on Broad street?

Answer. My opinion is that the introduction of steam-engines on Main street would be very injurious to the retail business on that street.

6th. Q. Is there or not a natural antipathy on the part of horses hitched to carriages and other conveyances towards cars drawn by engines?

Answer. I think horses are easily frightened by engines.

7th. Q. Could the business be done on Main street with the number of vehicles drawn by horses if there were trains moving up and down that street at all hours of the day propelled by steam-engines?

Answer. I think they would seriously interfere with the business on Main s't.

8th. Question. Would they not seriously depreciate the value of property on that st.?

Answer. I think they would.

9th. Question. In your opinion, have not these causes operating on

Broad st. produced the same effect on the business or property of that st. for the period that you have known Richmond?

Answer. I am not prepared to express the opinion that the effects on Broad st. have been the same that they would be on Main st.

10th. Question. Have they or not been injurious on Broad st., in your opinion?

Answer. I think they have, to a certain extent.

11th. Question. How long have you been doing business in Richmond?

Answer. About 35 years.

12th. Question. During that time, has your business not led you to N. Y. and other northern cities; if so, is there any one of them whose principal business streets are occupied by R. R., drawn by steam-engines, to the same extent that Broad st. is from the city limits to 8th s't?

Answer. I have; and think that none, to my knowledge.

13th. Question. Please state, if you know, how the cars of the B. & O. R. R. gets through Balto.

Answer. I have not been to Balto. since 1867. At that time the cars were drawn by horses from the Washington depot, through Pratt st., to the Phil'a depot.

14th. Question. Please mention some of the principal streets
102 in N. Y., Phil'a, Balto., and Washington, and say, if you can, whether any of them are occupied by railroads with trains drawn by steam-engines?

Answer. I don't think that either Broadway or any of the principal avenues in the most crowded and business part of N. Y. City are traversed by steam-engines. My opinion is the same in regard to Chestnut and Broad st's in Philadelphia, and Balto. st. in Balto. City, though I believe that some of these streets are crossed by engines in some parts, though I have no specific information on that subject.

15th. Question. Do you or not know the fact that the authorities of the city of Washington have had the track of the O. & A. road crossing the avenue at the foot of the Capitol and connecting with the B. & O. R. R. torn up?

Answer. I do not know anything about that.

16. Q. Do you believe that the people on Main street would submit to have a R. R. run through that street worked by steam-engines if it were attempted?

Ans. I have no opinion as to what they would do; I don't think that they ought to submit to it.

Cross examination:

1. X Q. By Mr. Stegar. When did you first know Broad street?

Ans. I knew it in 1833.

2. X Q. Was Broad street in 1836 one of the principal business st's in the city of Richmond?

Ans. According to my recollection, it was not.

3. X Q. Was it not then sparsely populated?

Ans. I think it was as to business houses.

4. X Q. How wide is Broad st.?

Ans. I don't know the exact number of feet.

5. X Q. Is it not nearly twice as wide as Main st.?

Ans. I suppose it is, nearly.

6. X Q. Is not most of the trade and the travel to the city of Richmond brought into the city below the hill upon which Broad street is situated?

Ans. I think it is.

7. X Q. You have stated that you think Broad street has advantages for a general retail business. Will you be good enough to state what are those advantages, and from what source that retail business is to be derived?

Ans. I think the advantages for a general retail business on Broad street are chiefly its proximity and convenience to family residences, and its width, and its being a level street. I think the business is derived from the fact that it is near the families and the districts more densely populated by colored people.

8. X Q. Do I understand you to say, then, that the business of Broad street is merely of a local character?

103 Ans. I think mainly from the local character and its convenience to the counties nearest to the western portion of the city.

9. X Q. Does it not derive a considerable trade from persons and products brought down by the Richmond and Fred'b'g road?

Ans. I believe it does.

10. X Q. If the terminus of that road were located on Byrd st., and persons and products brought down by that road were delivered at Bryd st., would not much of the trade which is now derived from the road be diverted from Broad st.?

Ans. I believe that a considerable portion of it would go to the lower part of the city.

11. X Q. Is not the ascent from Byrd st. to Broad steep, and would persons who were delivered at Byrd st. from the cars be likely to do their trading where they would have to encounter the difficulties of that ascent, and would have to send their purchases from Broad st. to Byrd?

Ans. I think that many, especially ladies, would be deterred from going to Broad st.

12. X Q. Do you believe that the local business of Broad st. during the last 35 years could have brought it to the state of prosperity that now exists on that st.?

Ans. No, sir; I think not.

13. X Q. Considering the competition in retail business of Richmond, could that business safely rely for a remunerative profit upon the mere local custom of Richmond?

Ans. I don't think that the retail business in any part of the city could rely for a remunerative profit on merely local custom.

14. X Q. You have stated that you did business on Broad st. below 9th for a short time; did you find that a very eligible and profitable stand for a retail business?

Ans. I did not think it was.

15. X Q. Give your reasons for that conclusion.

Ans. Because it was, in my opinion, too low down on Broad st.; because it was below the thoroughfare leading from the northern part of the city to Main st.; because below 9th st., on Broad, is comparatively unfrequented by strangers coming to the city, and inconvenient to persons residing in the western part of the city. My place of business was four doors below 9th on Broad; say, some 65 or 75 feet below 9th.

16. X. Is not 9th st. one of the principal thoroughfares leading from the hill to Main st.?

Ans. I think it is.

17. X Q. You said that this place of business was too low down Broad st.; to what part of Broad st. did you refer as being more eligible to business?

Ans. From 3d to about 8th, in my opinion.

18. X Q. Do you consider Broad st. at this time one of the principal business streets in the city of Richmond?

104 Ans. I do.

19. X Q. To what extent is the business of Broad street sustained by country custom, independent of that introduced by R. R's?

Ans. I think that the trade from the counties around, independent of R. R's, is not large nor remunerative.

20. X Q. You have stated that in your opinion a R. R., with the use of a steam-engine thereon, on Main street, would be very injurious to the business of that street. Suppose the business of that street depended mainly upon its local custom, and that street was 116 feet wide, and there was located upon it a R. R. communicating with a large portion of the entire State, and introducing into it a large number of persons outside of the city of Richmond, and a large amount of the products of the county, would not the advantages of such a road as that to Main st. far overbalance any annoyances resulting from the use of steam-engines on the street?

Ans. I think they would overbalance, provided there were not convenient and contiguous streets from which customers might get their supplies. What I mean to say is, that the trade of Main street, under the supposed circumstances, would be as large as it is if there were not other streets and thoroughfares in the city traversed by engines.

21. X Q. Has not the population on Broad street greatly increased since you first knew it?

Ans. I think it has.

22. X Q. Has it not been closely built up with business houses between 1st and 8th st's since you first knew it?

Ans. Yes, sir; I think it has.

23. X Q. Are not those business houses all occupied by business men at this time?

Ans. As far as I know, they are.

24. X Q. Has not the business done on Broad street greatly increased since you first knew it?

Ans. I think it has; but I think business of Broad st., especially the small retail business, has been very much increased by the distruction of store-houses on Main street, and is larger than it would have been but for that calamity or destruction.

25. X Q. When did that distruction of houses on Main street occur?

Ans. April 3, 1865.

26. X Q. Have not nearly all of the houses on Main st. been long since rebuilt?

Ans. They have been, but the business houses on Main st. are large and expensive to rent, by which many small retail dealers have been deterred from doing business on Main street, in my opinion.

27. X Q. You say the small retail business on Broad st. has been very much increased by the destruction of houses on Main street; do you mean that the small retail dealers were drawn from Main to Broad st. by the destruction of the houses on Main st.?

105 Ans. I do not know of many who have been drawn from Main to Broad, but at the end of the war there were many new enterprises, and many persons just resuming business, who would have preferred Main st. if they could have obtained business houses at a moderate rent.

28. X Q. If, since you first knew Broad st., thirty-five years ago, its population and its trade and its buildings have all greatly increased, and from being comparatively an insignificant street it has become one of the principal business st's in the city of Richmond, and if, during

this whole period, in which the said street has grown from obscurity to such wealth and importance, the road of the defendants has been operated upon it by steam-engines, will you be good enough to give your reasons for having come to the conclusion that the use of engines upon the defendants' road has, to a certain extent, been injurious to the business and property on Broad street?

Ans. I know very little about the business of Broad st. as compared with that of Main st., and judge by the general sentiment among the families of the city as to the danger of frequenting that street, the objection to driving on the street to a certain extent, and the expression of opinion of some judicious people as to the effect of the R. R., that the business of Broad st. has been injured to some extent.

29. X Q. May not imaginary injury have been more than compensated by the benefits derived from the R. R.?

Ans. I will say that since the agitation of the question I have often thought of what the result would have been if the R. R. had not been on Broad st., and have never been able to form an opinion in my own mind as to whether the injury has been compensated for the benefits derived from the railroad.

30. X Q. Am I to understand, then, from your answer to the 28th question, that you do not know of any injury which has resulted to the business on Broad st. from the use by the defendants of the steam-engines on the road, but that your opinion that it has been injured to some extent by that cause is based upon loose conversations had by you with other persons?

Ans. I have no knowledge of any particular instances in which the business of Broad street has been injured, and derive my opinion from the sentiments of some who trade on Broad st. and do business on Broad st.

31. X Q. Do you mean that you have derived your opinion from some of the members of the Broad St. Association?

Ans. I do not remember ever to have had a conversation with any member of the Broad St. Association on the subject.

32. X Q. Do you know who the members of the Broad St. Association are; if not, how do you know whether you have had a conversation with them or not?

106 Ans. I intended to say that I did not know of any member of the Broad St. Association with whom I have had a conversation on the subject. I do not know but one member of the association.

33. X Q. Will you be good enough to state from whom you did get the general sentiment that the business of Broad street is injured by the use of engines on the defendant's road?

Ans. I do not now remember the names of any of them.

34. X Q. You have stated that your business had led you frequently to visit New York and other northern cities; will you be good enough to state how often you have been to N. Y. and Philadelphia, and when you were last there?

Ans. As I said before, I had not been to either place since the winter of 1867; before the war I visited New York four or five times a year, say for about five years preceding the war, and after the war three or four times a year until 1867.

35. X Q. During your visits to N. Y. and other northern cities, was it any part of your business, and did you pay special attention to all the R. R's entering N. Y. and the other cities which you visited?

Ans. It was not a part of my business, and I did not.

36. X Q. Can you tell me the number of R. R's that entered N. Y. in 1867? If so, give the names.

Ans. I cannot.

37. X Q. Can you say of your own knowledge that in 1867 there were no R. R's within the city of N. Y. that were operated by steam-engines?

Ans. I cannot.

38. X Q. Is your knowledge with regard to the R. R's entering Phila. and Balti. more extensive and more accurate than it is with regard to those entering N. Y.?

Ans. It is not.

And further this deponent saith not.

SAM'L M. PRICE.

Deposition of W. A. Cardoza, taken the 28th of April, 1874, (marked "No. 10.")

1. Q. Where do you reside, and what is your business, and where do you carry on business?

Ans. I reside 813 Grace st. I am dry-goods merchant on Main st.

2. Q. Are you acquainted with Broad st.; and, if so, how long have you been?

Ans. I am, and have been some 18 or 20 years.

3. Q. What is the effect of the engines, as far as your knowledge goes, and in your opinion, upon the trade, business, and property of that st.?

107 Ans. In my opinion it is depreciative to property and injurious to trade.

4. Q. Is it or not hazardous to drive on Broad st. with horses that are not well accustomed to steam-engines, unless they are very dull, poor hacks?

Ans. My experience with my horses is that it is.

5. Q. Would you be willing to see a R. R. through Main st. which was worked by locomotive steam-power?

Ans. I would oppose it strenuously.

6. Q. Do you believe that merchants on Main street would permit a R. R. worked by steam-engines to be run through Main street?

Ans. I do not.

Cross-examined by Mr. Steger:

1. X Q. Have not the population and business of Broad st. greatly increased since you first knew it?

Ans. I think it has.

2. X Q. Has not the value of property on Broad street greatly increased since you first knew it?

Ans. I think the value of property has increased.

3. X Q. Why, then, do you think that the use by the defendants of the engines upon their road has depreciated the property on Broad st.?

Ans. I think, from the natural location of Broad st. and its accessibility to the wealthiest portion of the population, that it would have increased more in the value of its property if the engines had not been there.

4. X Q. Do you mean to say that the local trade of that portion of the city which is so accessible to Broad st. would have increased the business and property on Broad st. to a greater extent than now exists if the R. R. had not been there?

Ans. I do.

5. X Q. Will you be good enough to state what proportion of the population and wealth of Richmond is accessible to Broad street?

Ans. A very large portion.

6. X Q. Is one-fourth of the wealth of Richmond accessible to Broad st.?

Ans. I think it is fully.

7. X Q. Please state why you think so, and what are your data for such an opinion.

Ans. I think it is accessible to the upper part of Main, Cary, Franklin, Grace, Marshall, Clay, and Leigh st's, Brook avenue, and the subu'bs to the north and west.

8. X Q. State whether any retail business of any magnitude, taking into consideration the competition in the city of Richmond, can safely rely upon mere local custom for its profits.

Ans. While it may not rely exclusively on its local trade, it is
108 a source of very great profit to the trade in connection with the floating trade.

9. X Q. If the business of the defendant's road was done at its terminus on Byrd st., would it not carry from Broad st. a large portion of its country trade?

Ans. I don't believe it would carry as much away as would be added to the street if the engines were removed.

10. X Q. My question was, and is, would not the removal of the terminus of the R. R. to Byrd st. carry from Broad st. a large amount of its country trade?

Ans. I think it would.

11. X . Is it your opinion that the merchants on Main st., or any of them, would prefer the local business which they could get on Broad st., provided the R. R. were removed from it, to the general business which they now have on Main st., and that they would remove from Main st. to Broad in order to get that trade?

Ans. I believe some would.

12. X Q. Do you believe that more would remove from Main street in order to get this local business than would from Broad to Main in order to get the general business?

Ans. I believe more would remove from Main.

13. X Q. Do you believe that the local business of Broad st. for the last twenty years, if the R. R. had not been on that street, would have produced that degree of prosperity which we now find existing upon Broad st.?

Ans. I do.

14. X Q. What is your reason for that belief?

Ans. I believe that in the place of medium-sized stores we should have large and commodious stores, and persons with capital would have sought the street, and that it would be one of the finest retail streets in the city.

15. X Q. What are the facts upon which you base that belief?

Ans. From the accessibility to the wealthiest and most populous parts of the city. I mean to say that persons from the country shopping in a city are apt to stop with their friends, and as this is the wealthiest part of the city they stop in this part. We get ten times as much business from private houses as we do from hotels.

16. X Q. Do you mean to say that most of the persons who come to Richmond to do their shopping stop with their friends?

Ans. That is exactly what I mean to say, and I say it after an experience of twenty years in that business.

17. X Q. Am I to understand you to say that the retail business of the merchants of Richmond is principally done by persons who come to Richmond and stop with their friends at private houses?

Ans. I do not; the principal business of the retail merchants is done by persons living in the city.

18. X Q. Are there not thousands and tens of thousands of
109 people who come yearly to the city of Richmond and do their retail business without going inside of a private house?

(These depositions are continued over until to-morrow, April 29th.)

Ans. Yes, sir; I suppose there are.

19. X Q. Do I understand you, in your answers given on yesterday, to mean to say that the retail business of Richmond is mainly dependent for its support upon the citizens of Richmond?

Ans. I do; I mean in my own business.

20. X Q. Have you any idea of the amount of groceries, hardware, and dry goods that are sold in the city of Richmond by retail to persons who do not reside in the city of Richmond?

Ans. I only have in regard to my business—dry-goods business; I suppose about 10 per cent. of our business is sold to the country.

21. X Q. Is that fact true with regard to the other dry-goods houses in Richmond?

Ans. I think it is.

22. X Q. Then I am to understand you as saying that the whole retail dry-goods business of the city of Richmond with people residing outside of the city amounts to only one-tenth of that which is done with the people of the city?

Ans. That is my experience in my business.

23. X Q. Did you not at one time do a retail dry-goods business on Broad st.?

Ans. Yes, sir.

24. X Q. What part of Broad st., and how long did you do business there?

Ans. About 75 feet below 9th st.; I think about 5 years. We left there about 1870 and went to Main st., between 10th and 11 st's.

25. X Q. Why did you leave Broad st.?

Ans. Because we thought we were too low on Broad to *to* catch the transient trade, and could not procure a store on Broad st. above sufficiently large to do our business; otherwise we would never have been on Main.

26. X Q. How far above on Broad did you deem it more desirable to have your store?

Ans. From 9th to 5th.

27. X Q. If you could have procured a house on Broad st., between 9th and 5th, you would have preferred it to Main, you say?

Ans. Yes, sir.

28. X Q. Please state why.

Ans. We had established and were doing a prosperous business on Broad st. We were about sixty-five or seventy-five feet below the regular thoroughfare down town, and that makes a great deal of difference
in business; if we could have obtained a store large enough to
110 do our business above 9th st., we would have preferred it to going on Main st. and taking the risk of carrying our custom with us. Ours was the last store on Broad st., and there was no inducement

offered below as to bring custom there. M'r Bell, who did business next door to us, moved away, and that had some effect, because two stores together combine to bring custom.

29. X Q. While you were on Broad st. did many of your customers do their shopping in carriages or other vehicles?

Ans. Comparatively few to those who did it on foot.

30. X Q. You had at that time, did you not, the largest and most fashionable dry-goods establishment on Broad st.?

Ans. I think we did.

31. X Q. You were willing to move that establishment higher up Broad st., encounter all the dangers and annoyances of the defendant's road, in order to get the transient custom in your business, were you not?

Ans. We were, in connection with the risk we were to run in moving our business to Main st.

32. X Q. But you were willing to remove your establishment from just below 9th st., where you had been doing a large and profitable business, to a point higher up Broad st., in order to get the transient custom, were you not?

Ans. Yes, sir; we were to get the transient custom and a better location for the local custom.

33. X Q. You considered, then, that the dangers and annoyances from the R. R. would be more than counterbalanced by the advantages to be derived from an increased transient custom, did you not?

Ans. Yes, sir; the advantage would be more than the annoyance.

34. X Q. You regarded, then, the dangers and annoyances of the R. R. as very slight, did you not?

Ans. No, sir.

35. X Q. Did you regard the increased transient custom that you would get by moving higher up Broad street of much value?

Ans. We did.

36. X Q. You have said that your experience with your own horses induced you to think that Broad st. was a dangerous place to drive upon; what is your own experience with your horses?

Ans. My horses manifest so much fear of steam-engines that I have given my driver positive instructions not to cross Broad st. with them. My wife jumped out of the carriage about ten days ago, got caught, and a gentleman had to hold the horses for her to get out.

37. X Q. What proportion of your business is now done by persons who do their shopping in carriages, as compared with those who go on foot?

Ans. The proportion is very small.

38. X Q. Is not your present establishment on Main st. as large and as fashionable as any dry-goods house on Broad st.?

111 Ans. It is.

And further this deponent saith not.

W. O. CARDOZO.

Deposition of Andrew Pizzini, taken the 29th April, 1874, (marked "No. 10.")

1. Question. Where do you reside, and what is your occupation?

Ans. My place of business is on Broad between 8th and 9th, and I am engaged in the wholesale and retail confectionary.

2. Q. Please to state what is the effect of steam-engines on the R., F. and P. R. R. through Broad st. on the trade and business on that street.

Ans. I consider it very injurious to my own business, and suppose that it is equally so with others.

3. Q. Does it or not render the street hazardous as a highway for persons in carriages drawn by horses?

Ans. I have seen a great many runaway horses; I have seen persons maimed and killed through runaways caused by the passage of locomotives through the street.

Cross-examined by M'r Steger:

1. X Q. How long have you been familiar with Broad st., and how long have you done business on it?

Ans. I have been familiar with Broad st. for twenty-odd years, and have been engaged in business as proprietor for nine years, and four or five years before that, occasionally as a clerk.

2. X Q. During the period that you have known Broad st., have not the population and the business done on it both greatly increased?

Ans. It has.

3. X Q. During that period has not the value of property on that street greatly increased?

Ans. It has increased.

4. X Q. Is not Broad st. daily frequented by a large number of vehicles of various sorts drawn by horses?

Ans. During the day a great many vehicles drawn by horses traverse Broad st., but at such hours as the locomotives run very few can be seen.

5. X Q. You have said that you consider the use of steam-engines upon this R. R. very injurious to your business; state why and how it is so.

Ans. I have had parties seated in vehicles in front of my store-door to drive off, before purchasing, at the sound of the locomotive bell; have had others, among whom were some of my best customers, to tell me that they were deterred from visiting my store on account of the locomotives, and I have also been told by parents that they prohibited their children from visiting the street altogether.

112 6. X Q. Did the persons who drove off from your store-door not come back again?

Ans. Sometimes they did and sometimes they did not.

7. X Q. How many such cases do you remember to have ever occurred?

Ans. I could not state anywhere near the exact number, but during the summer months there will probably be five cases like that in a week.

8. X Q. Can you remember the names of any such persons? If so, state them.

Ans. I can remember the name of Mrs. J. B. Pace, which happened lately; that is the only one I can remember now. Most of the cases happened with young men in buggies with ladies, and I can't recall who they were.

9. X Q. Has Mrs. Pace stopped dealing at your house on that account?

Ans. She has not entirely stopped dealing, but she stops her horses on Capitol st. and walks to the store when she wants anything while she is out herself, and sends orders through servants.

10. X Q. Has any of your known customers stopped dealing with you on account of the dangers of Broad street? If so, state their names.

Ans. I can't state whether they have or not. I don't suppose they have, but if they have not I believe they would come oftener if there were no locomotive to drive them away.

11. X Q. How long did your uncle, Andrew Pizzini, do business on Broad st., and where did he do business there?

Ans. He did business for twenty-two years next to the corner of 9th and Broad, and for nine years three doors from the corner of 8th, where I now am.

12. X Q. Did he not do a large and profitable business?

Ans. I believe he did.

13. X Q. Has not your business during the last nine years been large and profitable on Broad st.?

Ans. My business is large and increasing, and I am satisfied with the profits, so far.

14. X Q. Do you or not derive a considerable custom from persons who come down the defendant's road and stop at 8th st.?

Ans. I derive some custom from persons coming down the road, and from the road itself.

15. X Q. You say you have seen a great many horses run away on Broad st. in consequence of being frightened by the engines; how many do you mean by a great many?

Ans. I have a distinct recollection, in the last eight or ten months, of eight runaways, besides an indistinct recollection of more. Last spring M'r R. M. J. Paynter, the sup't of the W. U. Tel. off's, was driving a buggy and horse up Broad st. The horse took fright from a locomotive, threw Paynter out, injuring him about the face very much, ran down 8th st., starting my own waggon, loaded with ice-cream.

113 A short time after that a negro was thrown from a buggy, a short distance below my house, by a runaway horse, I think occasioned by the same cause. M'r Augustine's horse, being frightened by a locomotive, threw him out of his buggy and injured him. The street-car accident in which M'r Clemmitt was killed, which was attributed to the locomotive; a buggy, up-side down, came by the street-door on the side-walk last winter, same cause; don't know who it belonged to. A horse, attached to a waggon belonging to M'r *F.* H. Ellett, I think, ran off last week from the corner of 8th and Broad. M'r Paynter's horse ran off the second time a few weeks ago; when this buggy came sweeping down the sidewalk a good many persons, some nurses, with baby-carriages with babies in them, were on the street, but no one was hurt at that time that I know of.

16. X Q. Did you witness, yourself, each of these accidents and know of your own knowledge what caused each one of them?

Ans. I witnessed all except that of M'r Augustine's, and, to the best of my knowledge and belief, can say that they were caused by locomotives being run up and down the street at the time they occurred. I believe that all occurred about the time the accommodation train was moving up Broad st.

17. X Q. Did you see M'r Paynter's horse last spring when he first became frightened, and see yourself what frightened him?

Ans. I saw M'r Paynter's horse immediately after he had turned over the buggy, probably a minute after he had become frightened; but I don't know the cause; I didn't see the cause, unless it was the smoke from an engine standing in the yard of the depot.

18. X Q. Did you see and know the cause which frightened the horse which ran away with a buggy and threw out a negro man just below your house?

Ans. I witnessed the runaway from its commencement until it ended, but I don't know the cause.

19. X Q. Did you see and know the cause which frightened the horse that ran away with the street-car and killed M'r Clemmits?

Ans. I saw a train leave the depot, and about five minutes afterwards

saw the street-car pass my door, and believe the train caused the hors's of the car to run away.

20. X Q. Did you see and know the cause which frightened the horse attached to a buggy that came sweeping down the sidewalk in front of your store last winter?

Ans. I did not. The store-doors were closed, and I did not see the runaway until it was right opposite the door. I opened the door and looked after it after it passed.

21. X Q. Did you see and know the cause which frightened the horse attached to the waggon of M'r Ellott last week?

Ans. The accommodation train was in the act of passing 8th st. when *when* the horse ran off. The second runaway of M'r Pay'ter's horse happened on 7th st., and I saw the horse start off as the train moved
114 up the street, but saw nothing further, as the horse went down 7th st.

22. X Q. Have you ever known horses to run away on any other street in Richmond except Broad st.?

Ans. I have seen runaways on Broad st. as well as other st's which I do not believe were occasioned by locomotives.

And further this deponent saith not.

ANDREW PIZZINI, J'R.

Deposition of W'm Thalhimer, taken the 29th of April, 1874, (*marked "No. 10."*)

1. Quest. Where do you reside, and what is your business?

Ans. I reside corner of 6th and Broad; retail dry-goods dealer.

2. Quest. What is the effect of using locomotives on the R. R. on Broad st. upon your business and upon the trades and business of the street generally?

Ans. It do'sn't do us much injury; it is not injurious, so far as I know, to the business of the street.

3rd. Q. Do many accidents happen on the street from horses being frightened by the cars?

Ans. Some accidents happen sometimes.

And further this deponent saith not.

W'M THALHIMER.

Deposition of J. C. Courtney, taken the 29th of April, 1874, (*marked "No. 10."*)

1. Quest. Please to state where you reside and what is your business?

Ans. I reside on the corner of 7th and Grace; my place of business, 815 Broad st.; dealer in dry goods: I have been doing business on Broad st. since 1848 up to the present time.

2. Q. Please state what, in your opinion, is the effect upon the business, trade, and property of Broad street of running locomotive-engines upon that st.?

Ans. My opinion is that it is detrimental to the trade, consequently damaging to the value of real estate; my opinion is that if the engines and cars were taken off of the street that the vacant lots would be built up by substantial houses, and the old houses would be pulled down and new houses put in their stead, which would give a general impetus and life to trade; I know the fact that for many years that *that* persons from the country and others have avoided Broad st. for fear that their teams might become alarmed at the locomotives.

3. Q. Have there not been many accidents to persons and vehicles occasioned by the locomotives frightening horses, &c.?

115 Ans. There have been, but not recently in my knowledge; the reason there are not more accidents is that persons avoid the street in vehicles; there would be a great many, but persons are watching out for the engines and avoid the street.

4. Q. Does the R. R. bring either freight or passenger custom which is valuable to Broad st.?

Ans. Very little freight, so little that it is of no consequence; persons residing at Ashland and other places on the road, travelling on the accommodation train, have their places of business on Main and Cary streets, consequently they go rapidly down to their places of business on reaching the city, and on leaving the city in the afternoon they are usually pressed for time and do not trade with the Broad st. merchants; they make all their purchases down town; I believe that W. G. Dandridge & Co. and J. B. Kidd sell all the freight which comes in on that road consigned to Broad st., so you can see it is small; I think it is quite small.

(Mr. Steger, the defendant's counsel, not being present when the above examination of the witness Courtney was taken, the deposition is left open until to-morrow for exceptions, cross-examination, &c.)

APRIL 30TH, 1874.

J. C. Courtney recalled.

5. Q. At what hour does the accommodation train come into the Broad st. depot and leave it?

Ans. They arrive in the morning from 8½ to 9 o'clock; they leave at 6 o'clock in the afternoon.

6. Q. As a general thing do the passengers who intend to go out by that train come up to Broad st. until about the time of departure or near it?

Ans. They do not.

7. Q. Is not Marshall street, on Shockoe Hill, built up with good residences, generally first class, up as high as the market house on 6 st.?

Ans. Some of them are first class, some are not: none have been built since the war, except two tenements built of old brick between 9th and 10th, and the two public schools; Mr. Watts' house, corner 11th and Marshall; two near the medical college, now about being finished.

8. Q. Are not most of the houses within the limits you have mentioned first-class houses?

Ans. Most of them are.

9. Q. Is not the street well built up on Marshall above 6th?

Ans. There are but few vacant lots until you get above Foushee st.

116 10. Q. Is there not a large population in that part of the city lying north of Broad st. and east of Buchanan Spring?

Ans. Yes.

11. Q. Is not a large portion or the whole of the square opposite to your store fronting on Broad st. occupied by old wooden buildings which have been there for many years, except that part of the square fronting in like manner which is occupied by the R. R. co. for offices and as a yard into which it runs its cars?

Ans. Yes.

12. Q. Are there not some old wooden buildings on the square on which your store stands, between Pizzini's store and the corner of 8th and Broad?

Ans. Yes.

13. Q. Are there not some small wooden buildings on the same square, below your store, fronting on Broad?

Ans. Only one, I think.

14. Q. Are there not small wooden buildings on the lot at the corner of 7th and Broad?

Ans. On the N. W. corner there are.

15. Q. If all these spaces now occupied by wooden buildings, as before mentioned, and the space occupied by the railroad co. for depots, offices, and yards, were built up with houses as good as those which Pizzini and yourself occupy, would it not, in your opinion, very much increase and improve the business of Broad st.?

Ans. It would improve the business on Broad st., and enhance the value of other property on the st., if built up with such houses as Pizzini's, mine, and others.

16. Q. Do you believe that it ever will be so built up while the R. R. cars and engines run on Broad st.?

Ans. I think not.

Cross-examination by Mr. Steger:

1. X Q. Have not the business, and the population, and the value of property on Broad st. greatly increased since you first knew it?

Ans. It has; I am not a real estate man and can't say whether it has increased ratably with other property in the city.

2. X Q. Is not Broad st. very much sought after by business men engaged in the retail trade?

Ans. I can only answer as to dry-goods parties, and first-class dry-goods firms are not seeking business houses on Broad st., but small dealers, most specially in the millinary and fancy-goods line, seem to prefer Broad st.

3. X Q. Do you know of any vacant business houses on Broad st. between 8th and 1st?

Ans. Not one that I know of.

117 4 X Q. Have not many business houses been erected on Broad st. since you first knew it?

Ans. Yes.

4. X Q. Has not the character of the business houses on Broad st. very much improved since you first knew it?

Ans. Yes, but I have known Broad st. a long time; but I have lived on it more or less since 1834.

6. X Q. If the value of property on Broad st. has increased, and the population has increased, and the business has increased, and the character of the houses has improved, what makes you think that the road of the defendants on Broad st. has been an injury to the business and property on that st.?

Ans. On account of the growth of the city and the demands of trade and the improvements of city property generally, in order that Broad street should keep pace with the business of Main st. and other parts of the city, I think the time has arrived for the Fredericksburg R. R. track and depot to be moved off of Broad st., and it is the opinion of the merchants of the city that it would become the principal retail street of the city if the depot and R. R. track were removed.

7. X Q. Am I to understand you, then, to mean that the use of the R. R. of the defendants has not heretofore been injurious to the business and property on Broad st., but that, owing to the increase of busi-

ness and the progress of improvement, it will, in the future, be a serious obstruction to the free development and improvement of Broad st.?

Ans. In response to the question heretofore, "been an injury," I would say that it was not an injury at the time it was constructed; the business of Broad st. at that being very different from what it now is, and the city being so much smaller, it was not deemed an injury to the trade at that time; but owing to the growth of the city from that period to the present time it is now deemed expedient and proper that it should be moved off Broad st., as the increase and demand of the trade of the city requires.

8. X Q. Please state what injury the use of the road of the defendants on Broad st. has been to the business and property on that st.? I ask for facts within your own knowledge, and not for conjectures or the opinion of merchants generally.

9. X Q. I can state nothing more than I have said; in my opinion it is impossible for any one to specify all the injuries, and can only be given as an opinion.

10. X Q. Opinions are not generally formed by intelligent men with regard to such matters without some basis of facts. Will you enough to state the facts within your own knowledge upon which you have formed that opinion?

Ans. The facts are as I have already stated, that owing to the rapid increase in population, of trade, and improvements of the city generally, and that the owners of property on Broad st. desire that the de-
118 mand of trade shall be accommodated by the construction of new houses of business on Broad st., and that the opinion of the property-holders and the trade is, that the cars coming in on street, and their depots occupying a prominent portion, is an injury to the trade, and consequently the owners of property hesitate to make improvements until the R. R. is removed.

11. X Q. Is that the only reason upon which your opinion is based?

Ans. That is not the only reason, as I stated before. Persons and vehicles avoid the st. for fear their teams might be frightened by the locomotive; and I will add, in my opinion, that the street cannot be properly graded as long as it is so shaped as to accom'odate the cars entering the depot. I have reference to that part of the street where the depot is; higher up Broad st. I am not so well acquainted; I haven't been up there to see.

12. X Q. You have stated that when the road of the defendants was first built on Broad st. it was not deemed injurious to the business or property on that st. Please state when it was first deemed injurious?

Ans. I cannot fix any definite time. I would illustrate by saying, like the growth of other things, and especially say Main st.; the Union Hotel, on 19th st., was once considered the most central locality for a hotel; it is not now so considered. It would be impossible to say what year or month it ceased to be the central location.

13. X Q. You have stated that when the road was first built there was a difference in the character of the trade. What was that difference?

Ans. In 1835 or '6, I believe, at the time the cars entered Broad st., there was a large amount of heavy trade done at the upper end of Broad st.; most of the tobacco and other produce of the upper country was brought in by waggons; since that time the Fred'b'g R. R., the Louisa R. R., (then so called,) and the improvement of the James River Canal have taken this trade off of Broad st. and carried it down town; now the trade of Broad st. is almost exclusively a retail trade.

14. X Q. Were there not, when the R. R. was first built, a great many country waggons, with from four to six horses attached, daily seen on Broad st.?

Ans. Yes, sir.

15. X Q. Were not the horses attached to such waggons as apt to be frightened by the engines of the R. R. as horses now are?

Ans. Yes, sir.

16. X Q. Was not the effect of the use of the R. R. then injurious to Broad st. because it frightened the horses that drew the waggons that brought the trade to Broad st.?

Ans. Yes, sir.

17. X Q. You have stated when the R. R. was first built it was
119 not deemed injurious to Broad st. How did that happen if the effect of it was at first to injure the trade by frightening the horses that brought the trade to Broad st.?

Ans. If it was supposed by our common council that it would be injurious in any particular, they would not granted a way into the city; since entering the city by the grant, as I stated before, owing to the improvement of the city since that period, there is a desire at this time that it shall be removed off the street; as to frightening horses, the noise of a locomotive has always been frightful to horses.

18. X Q. Is not Byrd st. at this time, and has it not been for many years, very much frequented by vehicles of various sorts drawn by horses?

Ans. Not very much; there are persons in the city whose teams have become familiar with the noise of a locomotive, who do not hesitate to drive their teams up and down the *the* st., even when a locomotive is leaving or entering the city; other persons, whose teams are not so familiar, carefully avoid entering Broad st.

19. X Q. What you mean by "not very much"?

Ans. I me'nt the same that I supposed the question meant.

20. X Q. Are not all of the goods of the merchants on Broad st., and all of the fuel that is used by the persons living on Broad st., and a thousand other things too numerous to mention, hauled in vehicles drawn by horses?

Ans. The goods of the merchants on Broad st. are delivered by vehicles drawn by horses, such teams being very familiar to the locomotives; also the coal and wood delivered by like teams.

21. X Q. Do you mean to say that there are no other vehicles drawn by horses on Broad st. except those to bring goods to merchants and to bring fuel to persons living thereon?

Ans. I do not.

22. X Q. How do you know that horses used on Broad st. are accustomed to engines before the parties will venture to use them on Broad st.?

Ans. I have heard customers in my store coming there in vehicles instructing their drivers to look out for the engine, and on seeing the engine approaching, coming down the street, I have known them to drive away and wait for the engine to enter the depot before they return; I have seen persons in country vehicles approaching Broad st. who would send their driver or boy up to the street to look out for the cars before they would venture too near the street; not seeing the engine coming, they would venture to cross. It is a notorious fact that all country horses are afraid of locomotives, and no thoughtful person would enter Broad st. without first looking out for the locomotives.

23. X Q. Do you know that your business on Broad street has been injured by the use of the defendant's road on that st.?

Ans. It would be impossible for me to know the fact; I can only conjecture, the road having been there for forty years.

120 24. X Q. Do you know that the business of any other man on Broad st. has been injured by the use of the defendant's road in that street?

Ans. I do not know.

25. X Q. You have stated that the large part of the square opposite your store is occupied by old wooden buildings known as the old Swan Tavern; that there are some old wooden buildings just above your store, between Pizzini's and the corner of 8th and Broad; that there is one small wooden building on the same square, just below your store; that there are some small wooden buildings at the N. W. corner of Broad and 7th st., and that you believe that the ground occupied by these buildings will not be used for better improvements while the cars and engines of the defendants remain on Broad st.; what is your reason for so thinking?

Ans. My reason is, that should the depot and R. R. track be removed, there would be a change in the character of the trade which would demand larger and better houses; that it is observable that in the localities of all depots, in all cities, the business houses are not first class, but are constructed to accommodate the trade usually congregating about the depot.

26. X Q. Do you mean to say that the existance of the defendant's road in Broad st. has prevented the improvement of the said lots?

Ans. That is my opinion.

27. X Q. State to whom the said lots, respectively, belong?

Ans. The one on the corner of 8th and Broad belongs to the estate of Jos. Allen or his son Richard; the one between my store and the corner of 9th is held by Charles Hartwell under a lease—I don't know to whom it belongs; the wooden building in front of my store, on the opposite side of the street, belongs to Jno. C. Shafer and others; I don't know who owns the buildings at the corner of 7th and Broad—I think Frederick Anderson's estate.

28. X Q. You have stated that since you knew Broad street many vacant lots have been built up, and a better class of improvements put upon others; why should the effect of the R. R. be more injurious to the lots you have mentioned, some of which are below its terminus, than to those which are above?

Ans. There is no reason why, except it be that the road is not so well graded; at one time the cars were allowed to remain on the track all the time, and you had to drive around them, but they are not so allowed now; they obstructed the street very much.

29. X Q. Has not the property on Broad st., between 8th and 9th, increased in value in a greater proportion than the property on Broad st. above it?

Ans. I cannot answer; having no money to buy, I have not attended any sales of real estate, nor heard any reports.

And further this deponent saith not.

J. C. COURTNEY.

121 *Deposition of James M. Winston, taken on the 24th day of April, 1874, (marked "No. 10.")*

1st. Question by counsel for the defendants. Where do you reside and what is your occupation?

Answer. I reside now in Henrico County, and my occupation at present is farming.

2d. Ques. Did you ever reside in the city of Richmond; if so, for what period of time?

Answer. From about 1809 until 1850, with an intermission of about two years, 1846 and 1847, I think, during which years I lived at Magruder's, about a half mile this side of the new fair grounds.

3d. Ques. How long have you been familiar with Broad street in the city of Richmond, and what have been your opportunities for becoming so?

Answer. I commenced business on the south side of Broad street, between 5th and 6th, in 1828, and continued business on that side until 1842; I did business on the north side of that street for two years, (after an intermission of four or five years,) 1848 and 1849; I think in 1850 I moved to the county of Henrico, where I have been ever since.

4th. Ques. Do you own any property on Broad street; if so, state what property, and how long you have owned it?

Answer. The property, I think, is number 602, between 6th and 7th, on the north side of Broad street, running through to Pink alley; it is the second house from the corner of 6th and Broad; I think I purchased it about the year 1836, from James Gray, esq.; it was then under a five-year lease to Joseph Bigelow as a family grocery, yielding five hundred dollars per annum, the entire property running through; the front house has been rented for some years at a thousand dollars; the house in rear of said store rents for $18 per month, making $216 per annum; both of these houses were included in the lease for five hundred dollars; the gross amount for which they now rent is $1,216.

5th. Question. How does the population on Broad street at this time compare with the population in 1836; is it greater or less now than it was then?

Answer. I think it is about three times as great now as it was then.

6th. Question. How does the business on Broad street now compare with that done on it in 1836; is it greater or less?

Answer. It is far greater.

7th. Question. How do the business houses on Broad street now compare in number with the business houses on the same in 1836; are they greater or less now than they were then?

Answer. I think at least double; there may be at least three times as many; am satisfied they are double in number.

122 8th. Question. How does the value of real estate on Broad street now compare with its value in 1836; is it greater or less?

Answer. I think it has doubled in value; in many cases three times as valuable.

9th. Question. State, if you know, what has been the effect of the use of their road on Broad street by the defendants upon the business and the value of property on Broad street; has it been injurious or not?

Answer. Judging from the improvements upon Broad street, such as the grading and paving the street, and the multiplication of business houses, one is led to the conclusion that it must have been of great advantage.

Cross-examined:

1st. Question by counsel for plaintiffs. How are you related to the M'r Winston who is now an officer of the R., F. & P. R. R. Co.?

Answer. He is my second son; but as to any interest in the road, I

was at its inception a stockholder, but have long since parted with my interest in said road.

2d. Question. Why did you part with it?

Answer. It was necessary for me to raise money. I sold it to Nicholas Mills.

3d. Question. What did you pay M'r Gray for your property on Broad street, near Sixth?

Answer. Five thousand dollars.

4th. Question. How much have you spent upon it since in necessary and permanent improvements?

Answer. Up to about 1848 the improvements were very light. In 1848, or about that time, the house and dwellings were destroyed by fire, on which there was an insurance in the Old Mutual for about $3,500. After deducting salvage, &c., I think I got about $2,500. I then rebuilt, covering the same ground, expending, I think, for the erection of the present house, about $3,500. Since that the annual charges for repairing have been about fifty dollars.

5th. Ques. Did you rebuild both houses for $3,500?

Answer. The house in the rear was not destroyed.

6th. Ques. Is the house on Pink alley in the same condition now in which it was when you bought it?

Answer. I think it is in a much better condition now than it was then. It has been recently repaired by the tenant at his own cost, in addition to the rent, under a lease for three years.

7th. Ques. What business has been and is now carried on in said house?

Answer. At one time there was a grocery very profitably carried on there; at the present time it is an eating-house.

8th. Ques. Is it or not a low drinking-shop?

123 Answer. I cannot say.

9th. Ques. Is not Pink alley now, and has it not been for years, one of the most notoriously low and disorderly locations in Richmond?

Answer. I should refer you to our police reports for an answer. As I live in the country I do not know.

10th. Ques. Is it the alley running immediately by the Second market, from Sixth to Seventh streets; and is not your Pink alley house very near the market-house?

Answer. It is that alley. My house is twenty feet from the end of the market-house.

11th. Ques. When you bought your house, did you not consider it a great bargain?

Answer. Not more so than other property on Broad street, which I could have purchased as cheap, considering the locality at that time.

12th. Ques. What was the advantage of locality of the property you purchased?

Answer. Its location was good for the trade upon Broad street; and then its proximity to the market.

13th. Ques. When you bought it, was not the square opposite it a vacant lot, used as a garden?

Answer. One fourth of it, I suppose, was.

14th. Ques. Was not a great part of the square upon which your house stands, and below you, used in the same manner as the lot opposite?

Answer. There were three twenty-four feet tenements upon that square—mine being the centre one; at the corner of Broad and Sixth, a carpenter's shop, paint shop, and a large two-story wooden house, fifty

feet front at least, with some indifferent-looking houses in the rear on the alley. Pink alley had been opened. There was probably a garden back of the fifty-foot house.

15th. Ques. How long has your house been renting for the present price?

Answer. I think it is about four years. Previously to that it was occupied by Shields & Co., at a rental of nine hundred dollars. I mean the house on Broad street.

16th. Ques. What was it renting for at the time it was burned?

Answer. I think about eight hundred dollars. I can't say exactly.

17th. Ques. Was that for the entire property?

Answer. No. The Pink alley property was renting for about $150 *dollars* per annum.

18th. Ques. Did you not say just now that the vacant ground upon which your house stands, running back to Pink alley, sold for $160 per front foot in 1816, and other parts of the same square sold for $200 per foot front?

Ans. Yes, sir; from the old deed it so appears.

19th. Ques. Do you know of any vacant ground or lot on Broad street which will now sell for the same prices?

124 Answer. No; I do not.

20th. Ques. In what manner do you think the railroad has improved the value of real property on Broad street?

Answer. It has improved it by the grading and paving of the streets, and the multiplicity of business houses, the increase in rents, &c. I occupied a twenty-four-foot house on Broad street formerly at $150 per annum.

21st. Ques. How do you know that the increase of the number of business houses has not been caused by the increase of the population of Richmond and its general prosperity, but have been caused by the railroad?

Answer. I do not give the railroad the credit for all. Where commerce stops there must of course be men to do this business. A railroad simply passing through would not be of any advantage if it did not stop.

22d. Ques. Do you believe that the running of steam-engines, thirteen a day, is beneficial to either property or trade of Broad street?

Answer. Inasmuch as the t'avel and trade is accommodated by these trains, I think any evil occasioned by them is more than counterbalanced by the accommodation furnished both to the country and citizens of Richmond. As a property-holder, I should regret the removal of the road.

23d. Question. Would not the railroad be just as profitable to the people of Broad street if the trains were brought in by horses as if brought in by steam-engines?

Answer. If it were practicable; but still it would be a great inconvenience to the travelling public. They could not possibly be brought in with as much promptness by horse-power. I do not think the road would be as profitable to the people of Broad street if brought in by horse power as if brought in by steam-engines.

24th. Question. If the Broad street cars or trains were detached from the Fredericksburg train, or the Milford train, at the city line, or a reasonable distance beyond it, and brought down by horses to the present depot, would it not be just as profitable to the people of Broad street, and as convenient to the passengers, as if the same cars and trains were brought in by steam-engines?

Answer. Living in the country, and knowing the disposition of parties to have their private conveyances, I think if any hinderance was made they would come into town in their own vehicles; don't think it would be as profitable to the Broad street people if they were brought in by horses; the reason is this, they would scatter and go in every direction, and would trade elsewhere than on Broad street; some would go to Bacon Quarter Branch and some to Cary street. I do not think it would be as convenient to the passengers if they were brought in by horses.

25th. Question. Why would it not be as convenient to the passengers to have the trains brought in by horses?

125 Answer. The detention would be considerable. More passengers would probably be separated that might wish to be together, and the inconvenience of having their purchases delivered out at the place where they should take the engines from the trains is a great objection.

26th. Question. If the horses bring the trains to and take them from the same depot to which the steam-engines bring them and from which they take them, the depot at 8th and Broad, and the rate of motion for both be four miles or five miles an hour, what would be the detention, and why should there be any change in the delivery of their purchases?

Answer. A heavy train could not be drawn except by a great many horses, perhaps ten or twelve; I am not engineer enough to know. The hitching of the horses, and the liability of their not working, would consume more time necessarily than the continuation of a train drawn by a locomotive. Many articles that countrymen get now are frequently put in by the parties themselves, and it is more through accommodation than as freight.

27th. Question. Still why should there be a change in the place of the delivery of the articles purchased?

Answer. As long as the depot remains where it is, of course the freight will be put on there.

28th. Question. What, then, would be the inconvenience of the passengers?

Answer. I do not know that there would be any, except what I have already stated in a previous answer. I say it might be a matter of dollars and cents between the passengers and the company. The company might tax the passengers to pay the increased costs of drawing by horses instead of by steam-engines.

29th. Question. Did you ever travel on the great northern and southern mail-train through Baltimore?

Answer. I have never travelled on rail save across that little State of Delaware, from Princeton to New Castle, out of the State of Virginia.

30th. Question. How did you get to Delaware from Virginia?

Answer. In 1830, I took a steamboat at Norfolk, and ran up the bay to Frenchtown or New Castle, I forget which.

Re-examination:

1st. Question by counsel for defendants. In 1816, was or was not the currency greatly depreciated and greatly inflated, and were or were not the prices of land in Richmond and its vicinity extravagantly high on that account?

Answer. Yes.

And further this deponent saith not.

JA'S M. WINSTON.

126 *Deposition of Joseph Augustine, taken on the 13th day of April, 1874, (No. 10.)*

1st. Question. Where do you reside, and what is your business?

Answer. I reside on Nineteenth street, in Richmond, and my business is that of a confectioner or fruit-dealer.

2d. Question. Will you please to state whether you or your wife was ever injured by the running away of your horse or horses on Broad street from fright occasioned by the engine or engines of R., F. & P. R. Rd?

Answer. Yes, sir. The evening of August 1st, 1873, I was going up Broad street with my wife in a vehicle; I was in front driving and my wife was sitting back; I saw the engine come out of the depot-yard before me, and started to go up Broad street. I followed at some distance, no great distance, (my horse is very gentle, and not afraid of cars,) with the intention of turning at the next corner (a very short distance) over to the north side. Before I got to the corner the engine came back, letting off steam. I guided my horse to the right, intending to turn the corner, and as soon as the horse saw the engine coming so fast she made a jump and turned to the left, and I fell out to the right. I knocked a tooth out, bruised my face, and broke my right arm in two places. I am crippled now by it. I dislocated one toe on my left foot by the fall, I suppose.

3d. Quest. What became of your carriage and horse?

Answer. Just to show you how gentle my horse was, she ran up to the cross street and was stopped by a colored man without any difficulty. I drive the same horse now, passing railroads and engines. Neither my wife nor my carriage was injured. I drove up here to-day with the same horse, and drive her every day.

Cross-examination:

1st. X Q. Were you driving on Broad street on the occasion alluded to merely for pleasure?

Answer. Yes, for pleasure.

And further this deponent saith not.

J. AUGUSTINE.

Deposition of W'm H. Taylor, taken on the 13th day of April, 1874, (marked "No. 10.")

1st. Quest. Where do you live, and what is your business?

Answer. I live at 1013 Broad street, and am a physician, professor in a medical college, and coroner of the city of Richmond.

127 2d. Ques. Please to state whether you, as coroner, held an inquest upon the body of Thomas Clemmitt, who was killed on Broad street? If you were, please to state all that you know about the occurrence.

Answer. I was notified by a policeman on the 2d of September, 1873, about 6 o'clock p. m. I found the body lying in the street, at the corner of Eighth and Broad, with the skull crushed. I held an inquest that night upon the body, and the verdict of the jury was to the effect that the street-car company was censurable for using a scary horse on a street made dangerous by the R., F. & P. R. R. Co.

3d. Ques. Did you prepare the verdict in the case?

Answer. I did.

4th. Ques. What gave the peculiar character to the verdict?

Answer. It was to avoid direct censure of the R., F. & P. R. Company on one hand, and on the other to show that they were not altogether irresponsible for the accident.

5th. Ques. Who was it that desired not to censure the R. R. Company, and why was it?

Ans. I and a portion of the jury considered that the R., F. & P. R. Co. had a legal right to do what they were doing when the accident occurred, and the rest were inclined to pass unqualified censure upon the company. The verdict was a compromise to suit both views.

Cross-examination:

1st. X Q. How long have you been coroner for the city of Richmond?

Answer. I have been coroner now for nearly two years—two years next July.

2d. X Q. Is the case of Clemmitt the only instance in which you have been called upon to hold an inquest upon the body of a person killed on that part of Broad street occupied by R., F. & P. R. R. Co.?

Answer. It is.

Re-direct examination:

6th. Ques. Did not the death of Clemmitt, and the manner in which it occurred, give rise to a great excitement against the R., F. & P. R. R. Co., and was there not a large crowd assembled when the inquest was held?

Answer. There was great excitement, but no great crowd collected at the inquest, which was held at night at a distant point. A very large crowd assembled at the scene of the accident.

7th. Ques. Do you not consider it very unsafe to ride or drive on Broad street at those hours at which the cars may be passing, from the liability to be caught by them in the streets?

Ans. I do not consider it very safe to do so, but I cannot say that I consider it very unsafe, inasmuch as it is constantly done without any notable inconvenience.

128 8. Q. Would you not consider it very unsafe to travel over a bridge across a river which was liable, from its defect or peculiar construction of its timbers, at any moment to break down with you, although it had not broken down for some time?

Ans. I would.

9. Q. Don't you consider a highway walled in by buildings, on which you may encounter at any moment a steam-engine with a train of cars travelling at the rate of from four to eight miles an hour, always ringing a bell, and sometimes letting off steam, and sometimes throwing out cinders and a great deal of smoke, a very unsafe highway to be frequented by women and children in carriages drawn by horses, or by old and infirm persons who have occasion to pass that way?

(The counsel for the defendants excepts to this question because it is a cross-examination of the plaintiff's own witness, and because it is an argument against the fact already testified to by the witness.)

Ans. I should think so, unless experience should show the reverse.

10. Q. Do you know when and where experience have shown the reverse?

Ans. I can only answer from my official experience, and but one case of death that might be attributable to the conditions stated has come under my notice.

11. Q. Do you mean to say that you do not consider a highway such as I have described dangerous because not many persons are killed upon it, although many have been injured and others had their lives put in

jeopardy, and carriages and other vehicles have been broken by the causes specified in the question?

Ans. If these things, which are specified in the question, have occurred from the conditions stated, I consider that the highway is unsafe.

12. Q. Would you like to drive even a gentle horse upon Broad street when a steam-engine was passing up or down it, with or without a train of cars attached to it?

Ans. I should not.

13. Q. Why should you not?

Ans. I should be afraid the horse might run away; I might become the subject for an inquest myself.

14. Q. Is not a steam-engine in motion an object peculiarly alarming to horses generally.

Ans. I think it is.

Recross-examined:

3. X Q. Do you not live on Broad st.? If so, upon what part of it?

Ans. I do; between 10th and 11th streets.

4. X Q. Have you not often and over seen a large number of horses
129 attached to vehicles passing up or down that part of Broad st. occupied by the railroad; and have you ever seen any accident resulting from their doing so?

Ans. I have seen many vehicles and horses passing, as stated, and do not remember any accident occurring under the circumstances.

And further this deponent saith not.

WM H. TAYLOR.

Deposition of Peterfield Trent, taken on the 13th day of Ap'l, 1874, (*marked "No. 10."*)

1st. Quest. Where do you live and what is your business?

Ans. I live at 701 E. Marshall st., corner 7th; am a physician.

2d. Q. State how long you have resided where you do.

Ans. All my life.

3d. Q. Have you known any accidents to have been occasioned by the steam-engines which have been used by the R., F. and P. R. R. Co. on Broad street?

Ans. I have known of but one, and that was a colored boy, who was said to have been pushed off the train, by one of the conductors of the road, coming from the fair-grounds, causing a compound fracture of *of* the leg; amputation became necessary, and he died from the effects of the wound.

4. Q. Is or is not travelling on Broad street in carriages and other vehicles drawn by horses unsafe in consequence of the use of steam-engines on the railroad?

Ans. I think so.

Cross-examination:

1. X Q. For how many years have you been familliar with Broad street since it has been occupied by the R. r'd?

Ans. For thirty years.

2. X Q. Has not, during that period, the value of property on Broad st. been enhanced and the business done thereon greatly increased?

Ans. I am unable to say about the enhanced value of property; I am not a real-estate agent, but business has certainly increased.

3. X Q. When you first knew Broad street, were there not a great many vacant lots on it between 8th and 1st streets?

Ans. Yes.

4. X Q. Have not those vacant lots been all built up with business-houses which are now occupied by business-men?

Ans. The majority have been.

5. X Q. Is there a single vacant lot on Broad st., between 8th and 1st?

Ans. There is not.

6. X Q. Is not Broad street very much frequented by vehicles drawn by horses?

130 Ans. Yes; but not as much as it would be if the locomotives and trains were not allowed in the street. I am not anxious to get rid of the depot as a neighbor, but I am anxious to get rid of the locomotives, because I really think they injure the prosperity of the street.

7. X Q. Be good enough to give your reasons for thinking the R. R. has injured the prosperity of the street.

Ans. Because I don't think it is safe for a vehicle of any sort, with a horse attached to it, to encounter a locomotive in the st. I saw an instance of that a few evenings since—a horse that has been used to the R. R. all his life attempted to run at the corner of 2nd street when an engine came along.

8. X Q. You have said that you have known the road for thirty years, and during that time the business on Broad st. had greatly increased; what makes you think now that the road injures the business on that street?

Ans. Because Richmond is going to be a large city, and more persons are seeking trade here.

9. X Q. Do I understand you, then, to mean that in the past the road has been beneficial to Broad st. and increased it; that in consequence of the growing population in the city of Richmond you think it will be injurious to the business of that street in the future?

Ans. I do. I believe if the locomotives were taken from Broad st. that Broad street would become the Chestnut street of Richmond.

Redirect examination:

4. Q. Is or is not the value of property on Broad street and the streets north of it impaired, in your opinion, by the use of steam-engines on the R. R. on Broad str.?

Ans. Yes. I believe the value of property would enhance if the locomotive were away.

And further this deponent saith not.

PETERFIELD TRENT, *M. D.*

Deposition of Henry Miller, taken on the 13th day of Ap'l, 1874, (marked "No. 10.")

1st. Quest. State whether you reside on Broad street and own property there or not.

Ans. I have lived in Richmond since 1834, at the time when they commenced building the depot; I live on Broad street and own property there.

2. Question. Do you know of any accidents which have been occasioned by the engines or cars on Broad street since you have known the street?

Ans. As I have been occupied in my business on Broad street from day to day, during that period I have had occasion to see many
131 accidents which were caused by the engines and cars on that street; the first serious accident I saw happened about 30 years

ago, bet. 6th and 7th streets, where I was then doing business; a gentleman got entangled in the wheels of an engine and had his leg broken in several places; he was then brought in my house and attended by a doctor; I saw, one morning, Engineer Lewellyn coming in the city with his engine and train, and by crossing 4th street he ran over a white lady who was very old, and he killed her on the spot; I saw a colored boy who had his leg cut off by the same engineer between 3rd and 4th st.; I saw a colored boy laying on the track with his head cut off and his brain scattered in the street. It happened about the corner of 3rd st. During that period I have seen many other accidents where horses got scared from the blowings and the noise of the engine, and breaking up buggies, carriages, market carts, and country wagons.

3d. Question. Is or not the business of Broad street injured and the value of the property on Broad street impaired by the running of the trains with locomotives through the streets?

Ans. I believe that the property on Broad street and north of Broad st. is very much damaged and impaired, in my opinion, as I have been doing business on Broad street about 40 years, and as in proportion has increased in other streets during that time, the business on Broad street ought to be about double what it is now.

Cross-examination:

1. X Q. Where did you first live on Broad street?

Ans. Between 6th and 7th.

2. X Q. How long did you live there?

Ans. I can't remember exactly; I believe it was from about 1836 to 1840.

3. X Q. Where did you remove to from there?

Ans. I moved to between 4th and 5th, where I have resided ever since.

4. X Q. Who was the gentleman who got his legs entangled in the wheels of one of the engines and was seriously injured who has been spoken of by you?

Ans. He was a stranger.

5. X Q. Did you see him when he got entangled in the wheel of the engine?

Ans. The engine was right opposite my store, and when it stopped I heard the noise and the people, and they brought him into my store.

9. X Q. You did not see him, then, until the engine stopped?

Ans. No, sir.

7. X Q. You do not know, then, how the accident occurred?

Ans. No, sir.

132 8. X Q. What sort of wheels had the engine?

Ans. The ordinary wheels in those days.

9. X Q. Will you be good enough to explain how a man could get his legs entangled in the wheels of an engine?

Ans. No, sir; I did not make any inquiry; I went into the back room and attended to the wounded man.

10. X Q. You do not know, then, whether this accident happened through the fault of the injured man or from the carelessness of the engineer?

Ans. No, sir.

11. X Q. Who was the white lady who was killed by Engineer Lewellyn, as you have stated?

Ans. I do not know her name.

12. X Q. When did that accident happen?

Ans. Well, that might be some twenty or twenty-odd years ago; I can't recollect the time.

13. X Q. Did you see her when she was struck by the engine?

Ans. No, sir.

14. X Q. You do not know, then, how the accident happened?

Ans. No, sir; not until after it had happened; one morning, soon after the stores got open, I was in front of my store and heard the people say that a lady was killed in the street. I went in the street and the engine with the freight train from the north was standing, and right before the engine an old lady was lying on the track mashed to death, but I can't say how it happened.

15. X Q. You have said that you have seen a colored boy who had his leg cut off by the train between Third and Fourth st's. Did you see that accident when it happened?

Ans. At that time I passed up Broad st. when the train was stopped between 3rd and 4th, and I saw a good many people standing at the cars near the track, and they brought a colored boy from the track who had one leg cut off below the knee so that the lower part was hanging by the meat and pants. They carried him in a store right opposite, and I never took any further notice of him.

16. X Q. You don't know, then, how that accident happened and whose fault it was?

Ans. No, sir.

17. X Q. You say that an another occasion you saw a colored boy lying on the track about the corner of 3d st. with his head cut off. Did you see that accident when it happened?

Ans. No, sir.

18. X Q. You do not know, then, whose fault it was?

Ans. No, sir.

19. X Q. You say you have seen many accidents where the
133 horses got scared from the engines, &c., and breaking of buggies, carriages, market carts, and country wagons; did you see those accidents when they happened, and know whose fault it was that caused them?

Ans. I have seen them repeatedly, and generally happen by the engines blowing their steam and by their movement.

20. X Q. Does it not sometimes happen that persons drive horses on Broad st. that are not accustomed to engines and are not well broken, and may not these accidents happen from that fact?

Ans. Some of them might have happened, but the majority of them, in my knowledge, happened on account of the engines; but I frequently have seen that carriages with ladies, and country wagons on Broad street, when the drivers saw that an engine was coming either up or down, to drive fast to get in one of the cross streets, for fear that the horses might be scared and run away.

21. X Q. If you consider the use of the R. R. so injurious to property on Broad st., why did you buy property on that street?

Ans. Because I was doing business on Broad street for several years before, and I might be able to continue there to make a living.

22. X Q. If you consider the use of Broad st. by the R. R. so injurious to the business on that st. why did you continue to conduct your business thereon for 10 years?

Ans. Because when I bought that property on Broad street—I believe it was in the year 1838—I was not able to buy property on Main st., so I had to do the best I could to get a home.

23. X Q. If business was so much injured on Broad street, and prop-

erty was so much injured, would it not have been better for you to have rented a business stand on some other street?

Ans. I always thought "there is no place like home," and I stuck to my home and have been trying to improve it, particularly with the hope that that R. R., with the engines, would be removed from Broad st., and property on that street would more rapidly improve in value than any other street in Richmond.

24. X Q. Are you not one of the plaintiffs in this cause?

Ans. I am.

And further this deponent saith not.

HR. MILLER.

Deposition of James Sutliff, taken April 16th, 1874, (marked "No. 4.")

1. Question. Please to state whether you were driving the R. R. horse-car on Broad st. on the 2nd of Sept., 1873, when M'r Thomas Clemmitt was killed.

Ans. Yes.

2. Quest. State now what led to or caused the accident, and everything relating to it, to the best of your recollection.

134 Ans. The steam-cars led to it. I was driving down the street from Hollywood to 8th st., going to meet the car from down town at the corner of 8th and Broad, where we change passengers; I was near 7th st. when I met the 6-o'clock train on the R., F. and P. R. R. going up Broad street, the accommodation train going to Ashland; there were two engines, the "Agent" and another; the "Agent" goes in the yard after the train and brings it out, and then the other engine takes it; I met both engines between 6th and 8th streets; I was driving only one horse; he became frightened at the engine and ran to the right, entangling, in so doing, the trace in the brake-rod; I pulled him back in the track, but the trace being so entangled I had no control over him, and he ran away and ran over M'r Clemmitt at the e. side of 8th st. and killed him.

3. Quest. State exactly, if you please, how M'r Clemmitt was killed.

Ans. I think he came up on the down-town car, and was getting off to get on my car (No. 11,) and just as he got off of No. 2, the one he came up on, my horse struck him and knocked him down, and the right hind wheel cut his head open.

Cross-examination by Mr. Steger:

1. X Quest. How far was the engine from the car when the horse ran off?

Ans. One engine had passed; I met both between 6th and 8th st's; the first one frightened him and the second one made him run away.

2. X Quest. Was the horse you were driving a gentle one?

Ans. He was gentle every way except about the cars; he was afraid of the cars.

3. X Question. Was not that fact known to you and to the managers of the company before the day that this accident occurred?

Ans. It was known to me that he was scared of the cars, but it was not known to the superintendent, I think; he was not more scary than other horses; they are all afraid of the cars, more or less.

4th. X Quest. How long had you been driving that horse?

Ans. About two months.

5th. X Quest. Had you been driving him all that time on Broad st.?

Ans. All that time on Broad st.

6th. X Quest. Did you continue to drive him after that time?

Ans. No, sir; he hurt himself running away and we sold him—never drove him any more.

7th. X Q. Did you ever have any difficulty with him before the date of the accident?

Ans. Yes; I had him to get scared and break loose from the car on Grace street, where the R. R. crosses our track, when there was a train standing there unloading wood.

8th. X Q. When did that happen?

135 Ans. Some three or four weeks before this accident happened.

9. X Q. Did you report the fact to the superintendent?

Ans. No, never reported it at all.

10. X Q. Why did you not?

Ans. I did not think it was necessary to report it.

11. X Q. Did you consider the horse a safe one, notwithstanding his having broke loose from cars on that occasion?

Ans. Yes; I didn't think he was dangerous; he wasn't afraid except of cars, and it wasn't every day we met one.

12. X Q. Did the horse, on the day of the accident, commence running away before he became entangled in the harness, and was not that the cause of his running away?

Ans. The steam-cars scared the horse; the harness had nothing in the world to do with it.

13. X Q. Didn't you have brakes on your car at that time, and did you use them?

Ans. We had brakes, but the swingle-tree got hung in the brake-rod; the brake-rod goes down about six inches below the car, and when the horse turned the swingle-tr e got hung in it and I could not use it.

14. X Q. Did you testify before the jury which held the inquest upon the body M'r Clemmitt?

Ans. Yes, sir.

15. X Q. Did any other *other* of the street-car co. employees testify before the jury on that occasion?

Ans. One more; W'm F. Peters.

16. X Q. Did Peters testify before the jury on that occasion that the horse you were driving at the time of the accident was known to be very unsafe in the vicinity of a locomotive?

Ans. I don't know whether he testified it was known or not, but he testified that he was unsafe in the vicinity of an engine.

17. X Q. What office did Peters hold under the company?

Ans. He was a driver of No. 2 car.

18. X Q. Did you testify that before the accident the horse was known to be unsafe in the vicinity of a locomotive?

Ans. I told M'r Yateman a week or two after he bought the horse, who asked me how he was getting along, that he was a little scared of the engines, but I thought he would get over it. I told that before the jury.

19. X Q. Did you see the verdict of the jury in the case?

Ans. I saw it in the papers. I did not see it there.

20. X Q. How does your company manage about the purchase of their horses; do they endeavor to get horses that are accustomed to locomotives or not?

Ans. They generally buy the horses and try them, and if they can't get along with them they get rid of them.

21. X Q. How long have you been driving the cars on Broad st.?

Ans. About two years, "off and on."

136 22. X Q. Is not that street very much frequented by vehicles of all sorts drawn by horses?

Ans. Yes.

23. X Q. Were all the horses you ever saw on that street frightened by locomotives?

Ans. O, no; not all of them.

24. X Q. When you said, then, that the horse you were driving when the accident happened was not more afraid of engines than other horses what did you mean?

Ans. I mean that we had other horses which were as scared when we first put them there as that horse was, but they had got use' to it.

And further this deponent saith not.

JAMES SUTLIFF.

Deposition of R. L. Barnes, taken April 16th, 1874, (marked "No. 10.")

1st. Question. State if you know of any accident which has occurred on Broad st. by reason of the propulsion of the cars of the R., F. and P. R. R. Co. by steam.

Ans. I know of three, but know nothing especially in regard to any but my own case; the others I have only heard of.

2. Quest. Please state the circumstances, as near as you can, of the accident in your own case.

Ans. I was trying a horse to buy him; driving out, as I was going up Broad st., the horse got frightened; there were two engines on Broad. I had passed one of the engines and was alongside of the second one when it commenced blowing off steam and frightened the horse; the horse turned at the theatre corner and threw me out and dislocated my arm backwards; it was on the 21st of January last.

3d. Q. Please state if any permanent injury resulted.

Ans. My arm is crooked and I suppose never will be straight.

Cross-examination:

1. X Question. Why were you driving an untried horse up Broad st.?

Ans. I only went with the young gentleman who wished to sell the horse, and he was driving, I suppose, to get into a road in which to drive. I had nothing to do with the way he went there.

2. X Q. Where did you start your drive from?

Ans. Seabrook's warehouse.

And further deponent saith not.

R. L. BARNES.

137 *Deposition of N. M. Lee, taken on the 16th of Ap'l, 1874, (marked "No. 10.")*

1. Quest. Were you one of the assessors of real estate in Richmond at the last assessment, and when was it made?

Ans. I was one of the assessors; we commenced the assessment about November 1st, 1873, and finished about Feb'y 1st, 1874.

2. Quest. Upon that assessment, how did the property on Broad st. compare in valuation with other property in the city upon the principal streets; was the valuation increased on Broad st. with a corresponding ratio with the increase elsewhere?

Ans. In some portions of Broad st. the property is assessed higher than any other street, except Main st., in the city, to my recollection; I do not think for the last several years the increase in value on Broad st.

has been as great or anything like as great as it has been on other streets; this is especially the case in the western part of the city.

2d. Q. What parts of Broad st. are they in which the property was assessed high?

Ans. From 3d to 9th streets more especially.

3d. Q. Have you been familiar with Broad street for many years, or not?

Ans. I have been familiar with it for a number of years—more or less for twenty years.

4. Q. To what cause or causes do you ascribe the fact that for many years the property on Broad street has not advanced in value?

Ans. I think the running of locomotives renders it undesirable for some purposes, and has prejudiced the value.

5. Q. How does the property north of Broad street compare in the assessment with the property in the south of Broad st.—say on Marshall street on the north, and Grace on the south?

Ans. The property on Grace st. is very much higher than that on Marshall, west of 8th street.

6. Q. Do you, or do you not, believe that the same cause which has depressed the property on Broad st. has depressed the property north of Broad st.?

Ans. I think it has had more or less effect on the value north of Broad st.

Cross-examination.

1. X Q. Do you know what has been the ratio of the increase of the value of property on Broad st. as compared with the other principal streets of the city of Richmond since you first knew it, 20 years ago; has it increased in a greater or less ratio in value?

Ans. I could not speak from knowledge of the relative increase or decrease, except between the last two assessments made by the
138 city; within that period of time the increase in value has not been as great on Broad st. as upon either of the parallel streets north or south of Broad st.; this is especially the case with those streets south of Broad and west of 4th st.

2. X Q. Are not the parallel streets south of Broad, to wit: Grace, Franklin, and Main, west of 4th, considered as specially desirable for private residences, and is not property on them specially sought after by wealthy capitalists for residences?

Ans. Those streets are specially desirable for residences, and are occupied by our best citizens for residences; I do not know that they possess any natural advantages over the other streets; indeed, I think west Broad street, portions of it, if relieved of the objections mentioned before, would afford some of the most beautiful sites for residences in the whole city.

3. X Q. Is not western Broad very level and badly drained?

Ans. I do not regard it more so than Grace street; in fact the extreme western is not so much near the college, I mean Broad street west of Monroe, to the present western limits of the city.

4th. X Q. Has not the property on Broad st., between 8th and 1st, greatly increased in value since you first knew it, 20 years ago?

Ans. I cannot say I was familiar with the value of property on Broad st. 20 years ago, but I know enough to enable me to say that there has been a great increase in value.

5. X Q. When you first knew Broad st., were there not a good many vacant lots upon it between 8th and 1st streets?

Ans. There was more or less vacant property.

6. X Q. Is there any vacant lot now on Broad st., between 1st and 8th?

Ans. I know of no lots on Broad st., between 1st and 8th, actually vacant, but some with very temporary improvements upon it; I sold the improvements very recently in that territory, which had been built upon leased ground, at public auction, at ten dollars.

7. X Q. Is not Broad street between 1st and 8th generally closely built up and closely populated?

Ans. It is.

8. X Q. Has not, in the last twenty years, the business on Broad st. greatly increased?

Ans. I think it has.

9. X Q. Are not the business houses on Broad st. in great demand, and readily rented when they happen to be vacant?

Ans. I think they are, sir; they rent readily at fair rents.

10. X Q. Do you know of a single business house at this time unoccupied and for rent between First and 8th on Broad?

Ans. I do not, sir.

11. X Q. Is not Broad street greatly frequented by vehicles of all sorts, drawn by horses, between 8th and 1st str's?

Ans. Yes, sir; a good many waggons, carriages, drays, &c.; but I
139 think people feel more or less uneasiness at going on Broad st. at times, in consequence of the fear that their horses may be frightened by the locomotives: I know it is the case with myself: my horse is a gentle family horse, and stands well in front of my office, on Main st., without anybody to hold him.

12. X Q. Have you witnessed the scenes on Broad st. which have occurred during the holding of our annual agricultural fairs? If so, state if you have not seen thousands of people traversing that street, and vast numbers of vehicles drawn by horses at the same time on that street.

Ans. I have witnessed those scenes; I have seen a good many carriages and other vehicles on Broad st. when the cars were there, but I do not regard it as the usual and popular thoroughfare from the city to the fair grounds; a large majority go up Franklin street, intersecting Broad at the Baptist college, from thence to the fair grounds, or go up Leigh st. to the northern entrance of the fair grounds.

13. X Q. You have stated that the property on Grace street is very much higher than that of Marshall west of 8th street; is not the property on Marshall st. far less desirable for residences, not so well drained, not so attractive for its fine society, and less accessible to the business centers of city than corresponding lots on Grace st.?

Ans. I do not consider Marshall st. so attractive for private residences as Grace street; this is more especially so in the character of the buildings, and the society is regarded as of a more fashionable character.

Redirect:

7. Q. Please to state whether real property generally in Richmond has not increased in value very much within the time that you have been speaking of in this deposition.

Ans. It has.

8. Q. Is not Broad st. one of the most beautiful streets, and one of the widest in the city, if not the widest?

Ans. Broad st. is the widest st. in the city, and I think aught to be

one of the most beautiful, if it had the same character of improvements upon it.

9. Q. Do you not believe that it would be the great retail street of the town of the steam-engines were removed from it?

Ans. I do; I think it is already the second retail street in the city.

10. Q. You have been asked about the appearances on Broad st. in the days of the fair; is it not a fact that carriages use Grace and Franklin streets much more than Broad because of the frequent transit of the cars through it, and the fact that the people can go to the fair much cheaper on the cars than in hacks?

Ans. I think it is, sir; I think most of the carriages that go upon Broad st. on those occasions are generally those attracted there by the prospect of getting passengers to the fair grounds from persons there who have been unable to get on the cars.

And further this deponent saith not.

N. M. LEE.

Deposition of Fred. W. Dunkel, taken April 16, 1874, (*marked* "*No.* 10.")

1. Question. Please to state where you reside and what is your business.

Ans. I reside at No. 14 Broad st.; I am a confectioner; I have lived there two years.

2. Q. Do you know of any accidents on Broad st. occasioned by the steam-engines on the R., F. and P. R. R.?

Ans. I know of one accident which happened to my son in 1860, by which he was mortally hurt and died.

3. Q. State, if you please, what that accident was and all about it.

Ans. The boys had been playing on Broad st. at the wood-car, and some way or another they got under the wood-car, and the manager drove the boys away, and either by jumping down or falling down my son got between the track, and the cars were in motion at the time, and they mashed his body; D'r Thomas was called in to see him; they took him home, and he lingered until about 12 o'clock, when he died; it happened in the afternoon; D'rs Thomas and Coleman had a conversation, and pronounced that he was internally injured and no hope of recovery.

4. Q. Upon what part of Broad st. did this occur?

Ans. I can't say; I wasn't present; near D'r Thomas' office, between 1st and 2nd, from what I learn.

And further this deponent saith not.

FRED. W. DUNKEL.

Deposition of F. Laube, taken 16*th of April*, 1874, (*marked* "*No.* 10.")

1st. Question. Where do you live, how long have you lived there, and what is your business?

Ans. I live at No. 12 E. Broad st. between First and Foushee; I have lived on Broad st. 22 years—in my present house since 1865; I am an undertaker.

2. Quest. Do you know of any accidents which have occurred on Broad st. which have been occasioned, directly or indirectly, by the cars or engines, or both, of the R., F. and P. R. R. Co.?

Ans. I do.

3. Quest. Please to state them.

Ans. I was called on in my capacity as undertaker to bury the child of Dunkel, the witness who has just been examined, and the son of
141 Sterling Harris, a colored boy who was killed on Broad st. between 1st and 2nd; my book tells me that I buried Dunkel's child on the 3rd of March, 1860, which was killed by the R. R.; Sterling Harris' child was buried on the 1st of Sept., 1862; I cannot state names, but I have been called once or twice during my existence as an undertakes to bury persons who had been killed on the railroad.

4. Quest. Do you know of any accidents occasioned by the cars in which death has not taken place? If so, state them.

Ans. I have seen many and many runaways—too numerous for me to mention; I have seen the cars scare horses, and the horses running away break down awning-posts, breaking crockery on the pavement, and doing damage generally—that done by horses hitched to carriages, buggies, and other waggons.

5th. Quest. Have you ever seen the horses attached to country waggons so frightened by the engines or trains as to run away with the waggon and injure the person in it, or any person or persons on Broad st.?

Ans. I have.

6. Question. If you recollect, state when that occurred.

Ans. I have not taken notes; but during last fair week I saw several parties thrown out of the vehicles; I can't give names.

7. Quest. Is or is not the use of the R. R. on Broad st. with steam-engines injurious to the business of that street and to the value of property owned by yourself and others?

Ans. I think decidedly so.

8. Q. Do you know of any sale of real property on Broad st. recently; have you any means of comparing the sales of the same with a former period? If so, state them and make the comparison.

Ans. There were lots sold on the south side of Broad, between First and Second, within the last two years, for $45 per front foot; I paid for my property in 1860, for 26 feet, $2,500; lot adjoining, same No. of feet, $2,000; Wortham's property, on the corner of 1st and Grace, sold last year for $141 a front foot; I was present at the sale.

9. Quest. How will property north of Broad and west of 8th st's compare in value with property similarly situated on the south of Broad, Marshall, and Clay, for instance, north, and Grace and Franklin south?

Ans. I am not acquainted with the prices of property, except, perhaps, in my own neighborhood; I suppose property on 1st st. and Marshall would sell for about half or third as much as on Grace and 1st str's.

10th. Quest. Can you assign a reason for this difference in value or the causes?

Ans. I hear daily complaint of people being afraid to cross the
142 track on Broad st.; they are afraid of the steam-engine running up and down, going by the nickname of a "moving smoke-stack."

11. Quest. Is it or is it not a fact that the tide of fashionable driving avoid this street in great measure *for* in consequence of the R. R. being there?

Ans. I think so; persons tie their horses on the cross streets, and sometimes hire boys to hold them while they transact business on Broad street; I have held many myself.

12. Q. Has not Broad st., by reason of its eligibility in width of street, grade, &c., great advantages for a retail trade?

Ans. I think it has.

13. Q. Although it has been testified here to-day that Broad street is the second street in the city for retail trade, has not the retail trade on Broad st. been greatly curtailed by reason of the existence of the R. R. in B'd st.?

Ans. I say it has.

Cross-examination by Mr Steger:

1. X Q. Are you not a member of the Broad-street association, and directly interested in the result of this suit?

Ans. I am a member of the Broad-st. association, and no more interested than any other property-holder in the suit.

2. X Q. Did you ever live anywhere else in Richmond except on Broad st.?

Ans. Twenty-four years ago, when I worked journeyman for Jno. A. Belvin, I lived on Franklin and Mayo street.

3. X Q. You moved then to Broad st. and commenced business 22 years ago, did you, and have continued there ever since?

Ans. Yes, sir.

4. X Q. Were not locomotives used in Broad st. at the time you went there to live?

Ans. They were.

5. X Q. If their use upon that street was so dangerous and so injurious to business, why did you continue your business upon that street so long?

Ans. I don't know, except that I hadn't the means to buy or rent on Main street at that time.

6. X Q. Why couldn't you have taken some other street than Main st.?

Ans. I suppose it was by chance I came on Broad st.—just the same as I came from Europe over here.

7. X Q. Do you mean you selected your business location on Broad st. by chance?

Ans. I don't know any other reason.

8. X Q. If you selected your location on Broad st. by chance, and afterwards found that by reason of the use of locomotives in that st. it
143 was dangerous and unprofitable to stay there, why did you remain so long on that street?

Ans. I hoped then, and do now, that the R. R. would be abolished.

9. X Q. And were you inspired by that hope to purchase property on that st., when the value of property on it, as well as the value of business, were so much injured by the R. R.?

Ans. I was.

10. X Q. In that period of time, 22 years, you say that you have been called upon to bury the child of Mr. Dunkel and the child of Sterling Harris, a colored man, both of whom were killed by the train of the R. R.; were you present when either of them was killed?

Ans. I was not present when they were killed; I was present at the time the inquest was held upon the body of Sterling Harris' child.

11. X Q. You do not know, then, of your own knowledge, that either of them was killed by the engine or train of the R. R.?

Ans. No more than the statement of their parents and the excitement of the neighborhood at the time.

12. X Q. You have stated that you had been called upon once or twice to bury other persons who had been killed on the R. R., but could not state their names; did you bury them?

Ans. I did.

13. X Q. How does it happen that your book does not show their names and the time they were buried, as well as those of Mr. Dunkel's child and Harris' child?

Ans. From the fact that I was not well versed in the English language, and am not now, and my books were not kept regularly, and some of the leaves in my old books were lost.

14. X Q. Were they buried before or after Dunkel's child?

Ans. Before that time.

15. X Q. Were you present when they or either of them was killed?

Ans. I was not.

16. X Q. You do not know then, of your own knowledge, of the circumstances attending the accidents, or whether either of them was killed by the train or engines of the railroad, or whether they were killed within the limits of the city of Richmond?

Ans. No more than I have stated in the other cases.

17. X Q. You have stated that you have seen many, many runaways, too numerous for you to mention; then how many do you mean by "many, many?"

Ans. I mean that it is not in my memory to call the number—say some forty or fifty, maybe more.

18. X Q. Can't you remember the names of any of them and the time when they occurred?

Ans. I stated before I didn't take any notes of them.

144 19. X Q. Have none of these "many, many" accidents to which you allude occurred within the last twelve months?

Ans. I think they have.

20. X Q. Can't you remember the names of the parties and circumstances of accidents so recent?

Ans. I remember one which happened in front of Dupuy's apothecary, but I do not remember the name; it happened within the last twelve months; I remember one double country team running on the street and breaking down M'r Girard's fence near Brook avenue also within the last twelve months.

21. X Q. Were you present on these occasions, and did you see the accident yourself?

Ans. I saw the one in front of Girard's; and I came up shortly after the one in front of Dupuy's happened.

22. X Q. In the case of the accident in front of Girard's, which you say you saw, please state all the circumstances which you witnessed?

Ans. The team was standing before Mr. Jones' grocery, and the engine came along and scared them and they ran away; they ran up to Mr. Girard's, when they were stopped; Girard's is a couple of doors from Jones'.

23. X Q. Is that the only accident you yourself witnessed, and the circumstances of which you can testify to?

Ans. I witnessed others, but didn't take any note of them.

24. X Q. In the prosecution of your business as undertaker, do you not have occasion to use a number of hacks on Broad st. for funerals?

Ans. I have.

25. X Q. In the prosecution of your business as undertaker, on Broad st., 22 years, have you ever had any accident to happen to your funeral trains, occasioned by the engines of the railroad?

Ans. I have not; but I avoid Broad st. as much as possible.

26. X Q. Can you avoid Broad st. where the body of the deceased is on Broad st. and the funeral procession has to stand in front of his house thereon and start therefrom?

Ans. I generally take the next turn to go on another street towards the cemetery, or towards a church designated; it is true the procession has to stand on Broad street and start therefrom when the corpse is on that street.

27th. X Q. Does it not sometimes happen that the procession has to wait on Broad st. until the funeral services are performed?

Ans. Those drivers who have lively horses stand on a side street until the procession gets ready to move; the procession has to wait until the funeral services are performed.

28. X Q. Is not Broad st. very much frequented by vehicles of *of* all sorts drawn by horses?

145 Ans. Yes.

29. X Q. Has not the value of the property on Broad st. greatly increased within the last 22 years?

Ans. It has on a portion of Broad st.: I don't think it has increased any west of Second str.

30. X Q. It has greatly increased, then, in value between 8th and 2nd sts.?

Ans. I can't answer that question; I never owned any property there, nor did I ever deal in property.

31. X Q. You said, in answer to a preceding question, that in the last 22 years the value of the property had increased on some parts of Broad st.: please state what part of Broad st. you referred to.

Ans. I said I think it did east of Second st.

32. X Q. Is not the use of the R. R. on Broad st. with engines east of 2nd st. as dangerous and as injurious to property and business as it is west of Second st.?

Ans. I think it is.

33. X Q. Why, then, should the property east of Second st. increase in value, while that west of 2nd st. has not increased in value?

Ans. Because it is near to the market, and near to the centre of the city and the business houses.

34. X Q. How much nearer is the square between 2nd and 3rd street than the square between 1st and 2nd to the business part of the city?

Ans. One square.

35. X Q. Has not the business done on Broad street greatly increased within the last 22 years?

Ans. I don't think it has.

36. X Q. Are there not more business houses on Broad st. now than there were 22 years ago, between 8th and 1st st's?

Ans. Not many more; some houses have been changed into better houses.

37. X Q. Were there no vacant lots on Broad st., between 8th and 1st, 22 years ago?

Ans. There were not more than three or four, on the corner of 2nd and next to Brackett's tavern, to my knowledge.

38. X Q. Is not Broad st. from 8th to 1st closely built up on both sides with business houses, and is not every house at this time occupied by some person doing business?

Ans. It is closely built: there is a store at Brackett's tavern which has been for rent for six months: somebody lives up-stairs of the store which I have mentioned; I believe all the other houses on Broad st. are occupied by business men.

39. X Q. Are you familiar with the extent of the business done by each of the merchants and tradesmen on Broad st.?

Ans. I am not.

146 40. X Q. You do not know, then, the aggregate amount of the business done on Broad st., do you?

Ans. I don't.

41. X Q. How, then, can you determine that the business now done on Broad st. is not better than it was 22 years ago?

Ans. I judge from the general complaint.

42. X Q. Do you mean to say that the merchants on Broad st. generally complain that they are doing less business than they were 22 years ago?

Ans. I don't mean to say that they are doing less than they were 22 years ago.

43. X Q. What do you mean, then?

Ans. I mean that I don't see any improvements.

44. X Q. Were there any improvements on the property you bought on Broad st. at the time you bought it; if so, what?

Ans. There was a brick building on one, used a lumber-house, converted by me into a stable; the other had a wooden building.

And further this deponent saith not.

F. LAUBE.

Deposition of Julius Sycle, taken May 2d, 1874, (marked "No. 10.")

1. Quest. Where do you live and what is your occupation?

Ans. I live 415 Broad st.; merchant.

2. Q. How long have you done business there?

Ans. I have done business there, off and on, for 23 years.

3. Q. What has been, and is, the effect upon your business of the cars and steam-engines on the R., F. and P. R. R. on Broad st.?

Ans. In the first place, it keeps all people away from Broad st. who shop in carriages and are in danger, who would shop there if their carriages were safe; lives are endangered by it, specially children.

4. Q. Do many accidents happen on Broad st., occasioned by the use of the engines, to persons in vehicles, &c., drawn by horses, by reason of the horses becoming frightened at the engines?

Ans. Yes, sir; I saw one last week; a man from the country dragged two or three squares by his horses, they having become frightened at the engine; there is hardly a day that some accident of the kind does not occur.

5th. Q. Is or is not the business on Broad st. injured and kept down by the running of the engines through the street?

Ans. Yes, sir, it is; Broad street would improve a great deal but for the engines; I have been living on the street some twenty-three years, and I haven't seen much improvement: some few houses have gone up, and that is all.

147 6. Q. Have not most of the houses in the upper part of Broad st., between 5th st. and Brook avenue, been there for a great many years—for more than the time with which you have been acquainted with Broad st.?

Ans. Yes, sir; there has been no improvement.

7. Q. Do persons who come to deal at your store ever express apprehension in respect to the cars, and an unwillingness to deal on Broad st. in consequence of that apprehension?

Ans. They would if their carriages and lives were safe, but they consider them in danger.

8. Q. How is the real property on Broad st. and north of it affected by the R. R.?

Ans. A good deal, I think; if the R. R. were off, I think the property would gain a value of 25 per cent. at least.

9th. Q. What is the rate of damage, do you think, that it does to your business; is it as much as 25 per cent. also?

Ans. At least from 20 to 25 per cent.

Cross-examination by Mr. Steger:

1. X Q. Are you a member of the Broad st. association?

Ans. No, sir; I am not.

2. X Q. Since you have known Broad st., have not the population, the business, and the value of property on it greatly increased?

Ans. No, sir; I bought a house just after the war; I paid $7,500 for it, and I can't get to-day $5,000 for it.

3. X Q. Where was that house located?

Ans. Between 1st and 2nd, on Broad.

4. X Q. At what time did you purchase that house?

Ans. Second year after the war; I think, from Joseph Stern; precise date will be shown by my deed.

5. X Q. At the time you purchased it were not business houses in great demand, and were not prices for that description of property greatly inflated?

Ans. I don't think it was greater at that time than it is now for business houses.

6. X Q. In April, 1865, had not a great many business houses on Main and Cary streets been burnt, and did not many merchants who formerly did business on those streets remove to Broad st. because they could not get business houses elsewhere?

Ans. They did, but they soon removed on the first opportunity; but they thought business would improve more on Main st. than on Broad st. because of the obstructions of the R. r'd.

7. X Q. When were the houses on Main and Cary st's rebuilt and finished?

148 Ans. I really don't know—I think '66 and '67, as well as I can remember.

8. X Q. Was it before or after you purchased your house on Broad st.?

Ans. It was after I purchased my house.

9. X Q. How do you know that the merchants from Main and Cary st., who located after the war on Broad st., removed back upon the first opportunity because of the obstructions caused by the R. R.?

Ans. From the conversation I had with different merchants and public in general, daily.

10. X Q. Please give me the names of the merchants with whom you had conversation, and who told you that they moved from Broad st. because of the obstructions of the R. R.?

Ans. I can't do it right now, but if it is necessary I can get up a list of the names.

11. X Q. Where could you get up that list?

Ans. From persons now doing business on Main st.

12. X Q. How could you get that list if you do not remember the names?

Ans. By thinking over those merchants who did business on Broad st. with whom I had conversation since they moved.

13. X Q. State the names of all the merchants from Main street who did business on Broad st. after the war?

Ans. I can't do it right now, but I will get up a list.

14. X Q. Did not Tho's R. Price & Co. do business on Broad st. since the war?

Ans. They did.

15. X Q. Did they remove from Broad st. back to Main st. because of the obstructions on the road?

Ans. I do not know whether they did or not, but I had conversation with Mr. Price, that Broad st. would be the prettiest st. for retail if it were not for the obstruction of the cars.

16. X Q. When did that conversation occur?

Ans. At the time he was building his house on Main st. I met him in the store.

17. X Q. Did not Cardoza, Fourqurean & Co. do business on Broad st. after the war?

Ans. They did.

18. X Q. Did they leave Broad st. because of the obstruction in it?

Ans. I don't know.

19. X Q. Do I understand you to say that the population of Broad st. 23 years ago was as great as it is now?

Ans. I don't know that I have said anything about the population on Broad st.

20. X Q. Well, please state now whether it was.

Ans. I know parties who are able to get away from Broad st. do so because their children and families are in danger.

119 21. X Q. You have not yet answered the question whether the population of Broad st. 23 years ago was as great as it is now; please answer it.

Ans. I can't say, as I haven't kept an exact account.

22. X Q. I did not ask you for an exact account; I wanted to know of the population of Broad st. was as great 23 years ago as it is now.

Ans. Well, I really can't say.

23. X Q. Were there as many houses on Broad st., between 1st and 9th st's, 23 years ago as there are now?

Ans. I think there have been a few more new ones put up.

24. X Q. How many do you mean by a few; ten, a dozen, fifty, or a hundred?

Ans. I haven't counted them, but think I can do so.

25. X Q. Are there any vacant lots on Broad st. between 1st and 8th?

Ans. Not as I know.

26. X Q. Are there any vacant houses on Broad st. between 1st and 8th str.?

Ans. Not as I know.

27 X Q. Is not the business now done on Broad st. much greater than what was done on it 23 years ago?

Ans. No, sir; I don't think so.

28. X Q. Please state why you think so.

Ans. Because a great many people are afraid to come on Broad st. in their carriages and other conveyances on account of the R. R.

29. X Q. Were they not equally as afraid 23 years ago as now?

Ans. As much as I have experienced with my customers, they have always been dissatisfied.

30. X Q. I repeat the question; please answer it.

Ans. I give the same answer I did before.

31. X Q. Were not as many people deterred from coming on Broad st. 23 years ago, on account of their apprehension from the cars, as there are now?

Ans. As long as I have been in business and recollect, people have always been afraid to stop on Broad st. on account of the cars.

32. X Q. Did not the same cause of apprehension exist 23 years ago as exists now?

Ans. I really don't know; I can't answer that question; it should, by all means; I should think the danger was just as much at that time as it is now.

33. X Q. Do you mean to say that no shopping is done now on Broad st. by persons in carriages and other vehicles drawn by horses?

Ans. There is shopping done, but there would be a great deal more if it were not for the obstruction of the cars.

34. X Q. How many of your customers or friends are prevented from dealing with you because they are afraid to come on Broad st.?

150 Ans. I can't say how many, but there are a good many who are in misery while they are doing their shopping. I think we could gain a great many new ones if it were not for that.

35. X Q. Can you name half a dozen customers who have stopped dealing with you because they are afraid to come on Broad st.?

Ans. I can't say that I can name them, but I know some of my customers whom I see occasionally; they say they would come oftener if it were not for the cars.

36. X Q. Can you name a single one who stopped dealing with you on that account?

Ans. I can't say that I can, but I know I don't see them as often as I would see them.

37. X Q. If they are so much afraid of Broad street, why should they go there occasionally?

Ans. There are certain lines of goods kept on Broad street which are not kept anywhere else, especially millinery.

38 X Q. Are not ladies generally more timid and more likely to be afraid of the great damages from the road than men?

Ans. Yes, sir; I believe they are.

39. X Q. Are not the largest number and most fashionable milliner stores in Richmond located on Broad st.?

Ans. Yes, sir.

4 . X Q. Are not, also, the hair emporiums and fancy stores, in which the ladies chiefly delight, also on Broad st.?

Ans. Yes, sir, they are; for the simple reason that they are small stores and low rents.

41. X Q. How do you account for the fact that they are located upon a street which the ladies, their chief customers, are afraid to go upon on *on* account of the dangers incident to the use of the R. R.?

Ans. Well, as rents are low and they can't get stores elsewhere to do business.

42. X Q. Why could not, and were not, similar houses built upon the upper end of Grace, Franklin, or Main streets for this kind of business, instead of locating them on Broad st.?

Ans. I think if there were houses they would be occupied.

43. X Q. Is it not a fact when there is a great demand for houses in any particular locality they are generally built to meet that demand?

Ans. I don't think there has been a great change in Broad st. in the houses to suit the demand.

44. X Q. Is there not a large and thriving business done on Broad st. by the milliners, and hair emporiums, and fancy and trimming stores?

Ans. They are; the most of them are on that street.

45. X Q. Is there not a large and thriving business done one Broad

151 st. in the dry goods line, and in the shoe line, and in the confectionary line?

Ans. There is a good deal of it done, but not as much as might be.

46. X Q. In your opinion, is the business done on Broad st. in the lines you have just enumerated a large one or not?

Ans. I think it is a pretty fair trade.

47. X Q. Are not the stores and shops on Broad street very much patronized and frequented by ladies?

Ans. They are, as they cannot find a good many of the articles in other streets.

48. X Q. Is it not a law of trade that merchants consult not only the interests, but also the whims and caprices, and even the apprehensions of *of* their customers, so as to induce them to trade with them?

Ans. I can't decide that question.

49. X Q. If the apprehension of danger on Broad st. deterred a great many persons from trading thereon, would not some of the business people on Broad st. remove to some location free from such apprehension of danger?

Ans. They would if they were not living in their own property, and could rent cheaply elsewhere.

50. X Q. Do you know of any person who has removed their business on that account?

Ans. No, sir; I do not.

51. X Q. Do you know of any who has been killed or injured on Broad st. by the cars or engines of the defendants?

Ans. No, sir.

52. X Q. You say that many accidents happen on Broad st. occasioned by the use of the road of the defendants; please state how many such accidents you ever witnessed, and the circumstances of which you know yourself.

Ans. I will get up a list and hand them in.

53. X Q. Can you remember none at this time?

Ans. I can't remember the names of the parties that get hurt.

55. X Q. Without giving the names of the parties which get hurt, please give the number and nature and kind of the accidents which you have seen yourself, and the circumstances which give rise to them.

Ans. I see frights of horses daily which are in carriages, waggons, and carts, and if not well watched and driven by good drivers I think would be very dangerous.

53. X Q. State the case that occurred on yesterday that you saw.

Ans. I see horses frightened every day; I don't know of any which occurred yesterday.

56. X Q. State the circumstances of the case which occurred day before yesterday, how it occurred, and how near you were to it.

Ans. I don't know of any particular one which occurred, except what I said before.

152 57. X Q. State the circumstances of the one which occurred last Tuesday.

Ans. I can't answer that question. I don't know what to answer more than I have said before.

58. X Q. Do I understand, then, that you mean to content yourself with the simple assertion that accidents caused by the use of the defendant's road in Broad st., to your knowledge, occurred daily, without your being able or willing to describe such accidents, the circumstances under which they occurred, and your opportunity for knowing such circumstances?

Ans. Yes, sir, I do; as I do not keep an account of the accidents which happen.

59. X Q. Do you mean to say that during the last thirty days you have witnessed on Broad st. thirty accidents, caused by the use of defendant's road, and that you are now unable to describe the character of any of those accidents, what part of Broad st. they occurred on, and what were the circumstances under which they occurred?

Ans. I am able to describe one which I witnessed in front of my store. A man was standing in front of his waggons, a double team, the horses became frightened by the cars, and the man, holding to them, was dragged to Boschen's shoe-store, next square above me; it was a country waggon; he lost about twenty dozen eggs; no other damage was done. This is the same case spoken of by me in answer to the 4th question in chief.

60. X Q. Are there not a great many vehicles every day on Broad st. drawn by horses?

Ans. Yes, sir.

61. X Q. Can you say, of your own knowledge, that your business on Broad st. has been injured by the use of the defendant's road on that street?

Ans. The only injury, in my opinion, and based upon conversation with customers, is, that I would get more custom from people who deal in carriages and waggons, and who do not come on Broad st. for fear of the engines.

62. X Q. It is merely, therefore, an opinion or conjecture of yours that you are injured, and not a fact known to you, is it not?

Ans. Well, I think it is dangerous to my children, also; I have eight children; it is an opinion, of course; I don't know how to answer it.

63. X Q. Do you know that the use of defendant's road in Broad st. has been injurious to the business of any other person on that street?

Ans. My opinion is that it is in general.

64. X Q. Is it a mere conjecture, then, on your part?

Ans. No, sir.

65. X Q. What is it, then?

Ans. It is my opinion in general that the cars running up and down Broad st. is injurious to business and dangerous to people.

153 66. X Q. And that opinion is sustained by no actual injury resulting to yourself, that you know of, and none resulting to any other person that you know of; am I right in this conclusion?

Ans. None, except what I have stated.

67. X Q. Has your business on Broad street been profitable to you?

Ans. I have made a living there.

68. X Q. Why have you remained on Broad st. so long if the use of defendant's road has been so detrimental to your business?

Ans. In hopes that the railroad would be removed, sooner or later, from the st. I don't know what else to answer.

69. X Q. You have been living on hope, then, for the last 23 years, have you?

Ans. No, sir; I didn't say that.

Redirect ex.:

Is it or not your conviction that your business would be largely increased if the cars were removed from Broad st.?

Ans. It is my opinion that my business and the business of Broad st. generally and the welfare of the city would be improved by removing

the road from Broad st., and I think that is the opinion of all the merchants and people of Broad st.?

And further this deponent saith not.

JULIUS SYCLES.

Deposition of Maurice Evans, taken May 4th, 1874. (No. 10.)

1. Quest. State where you reside, and where you do business, and what is the nature of your business.

Ans. I reside at 122 W. Clay; do business at 326 E. Broad. I am engaged in the crockery and house-furnishing business and grocery.

2. Quest. Does the running of steam cars on the R., F. and P. R. R. in Broad st. injure or benefit your business and the business of the street generally?

Ans. It injures my business and the business of the street generally.

3. Quest. Can you form an opinion to what percentage of your business it injures you?

Ans. I should suppose ten per cent. I suppose in a few years, if the R. R. was away, it would make a difference of twenty per cent.

4. Quest. Why does it injure your business and the business of the street generally?

Ans. It prevents carriages from stopping there and remaining to allow customers to purchase.

5. Quest. Are not persons afraid to come into Broad st. in carriages drawn by horses, because of the cars passing up and down?

154 Ans. They are.

6. Quest. Have there not been frequent accidents upon Broad st. occasioned by horses running away, being frightened by the cars?

Ans. There have been.

7. X Q. Do you know of any persons being killed or severly injured on Broad st. from that cause?

Ans. I have heard of several. M'r's Booth, who now lives in Philadelphia, had a son killed in that way; she has married since and left here; she then resided here. The son was killed on Broad between 4th and 6th streets, I think. I was not present and cannot give the details of the occurrence.

8. Quest. Is there any other person of your name doing business as a grocer on Broad st.?

Ans. There is not that I know of.

Cross-examination by M'r Steger:

1. X Q. How long have you been familiar with Broad st.?

Ans. About eleven years.

2. X Q. Has the business on Broad st. improved any since you knew it?

Ans. I think it has improved in the same ratio that other business has, taking into consideration improvement in trade generally throughout the country since the end of the war.

3 X Q. Has the number of business houses increased on Broad st. since you first knew it?

Ans. Some few, perhaps, but not a great many.

4. X Q. Has the population on Broad st. increased since you first knew it?

Ans. That I cannot say; I do not know.

Has the value of real estate on Broad st. increased since you first knew it?

Ans. When I first knew Broad st. I had no idea of what the value of

property was, but at the close of the war I saw some sales made at higher rates than I think the same property is now selling for.

6. X Q. Were those sales of vacant lots or lots with houses on them?

Ans. Lots with houses on them—improved property.

7. X Q. Immediately after the war, and for some time thereafter, was there not great demand in Richmond for houses in consequence of the extensive conflagration on Main and Cary streets?

Ans. There was.

8. X Q. Did not prices run very high at that time in consequence of that demand?

Ans. I think they did somewhat; although I do not know that property sold for any more at that time than it was properly worth.

9. X Q. Do you own any real estate on Broad st.?

Ans. I do not.

155 10. X Q. Are you a member of the Broad St. Association?

Ans. No, sir, I don't know that I am; but I have signed several petitions; but whether those signers are all members of the association I do not know. I have never attended any of the meetings.

11. X Q. You have stated that the running of the steam-cars by the defendants on Broad st. injures your business and the business of the street generally; do you state that as a fact within your knowledge, or merely as your opinion?

Ans. I state it as a fact, and of my own knowledge.

12. X Q. How do you know it to be a fact?

Ans. From loss of custom, and the statement of our trade in the country that are afraid to stop there with their horses and carriages.

13. X Q. State how many customers you have lost by reason of the running of the cars in Broad st., and give their names.

Ans. That is something of an impossibility, to give the names and number of them all, because our country trade is transient, and there are a great many people who call in and deal with us whose names we never know; others, again, whose names I do not know, that tell us they would deal with us, but very often when they come in they are afraid to come on the st. for fear of an accident; and I have lost customers who have had their carriages standing at the door, had ordered their goods, had them partly put up, when the cars would come along; they would jump in their carriages and drive away and never come back; and others, frequently, while waiting for their goods, drive their horses around off the street until the cars pass.

14. X Q. Do you do a large business?

Ans. It ranges from thirty to forty thousand dollars a year; I mean my sales.

15. X Q. Can you tell me the names of any of your customers who have quit you because of the existence of the defendent's road in Broad st.?

Ans. They do not quit us entirely. M'r Davis, of Franklin Davis & Co., is the only one I know by name who has told us that he would stop there more frequently were it not for the cars; and there are others, whose names I do not know—more ladies than gentlemen, being more timid; we have transcient customers, who deal with us month after month, whose names we do not get.

16. X Q. Is not your store the second one above 4th st., and if your customers were very anxious to deal with you could they not safely do so by leaving their vehicles on 4th st. instead of driving them in front of your store?

Ans. It is; and they could not, because they would have to have

some one to mind their horses; it would be unsafe to leave them without some one with them; and, to induce them to stop in front of the store, we frequently have to have some one to stay out there and hold their horses for them.

156 17. X Q. Is it not unsafe to leave horses loose in any street in Richmond?

Ans. It is not very wise to do so anywhere, but still less so where there are steam-cars running, and still worse to leave them around the corner of the street where you could not see them.

18. X Q. Am I to understand you, then, that most of your customers who do their trading with you in vehicles drive the vehicles themselves?

Ans. I think that most of them sometimes have a driver, and sometimes drive themselves.

19. X Q. Couldn't those who have drivers safely send them around on 4th st.?

Ans. They could, but it is a trouble they do not like to be subject to, and invariably complain whenever they have to do it.

20. X Q. What proportion of your customers use vehicles when they trade with you—one-half, one-fourth, or one-tenth?

Ans. It is right hard to tell. I couldn't exactly get at that unless I had open accounts with them, for the reason that it is most always a cash trade.

21. X Q. Are there many or few who come to your store in vehicles?

Ans. Some days we have a good many; other days, only a few.

22. X Q. Do you not keep a horse and wagon yourself, to do your business?

Ans. I do.

23. X Q. Have you ever known an accident caused by the running of the cars to happen to your waggon or to the vehicle of any of your customers?

Ans. To my own waggon. When I first bought the horse I now have he was scared two or three times, I think, by the cars and made to run, but was caught before any damage was done; and as to our customers, when they will stop there, we try to prevent accidents by having their horses watched if it is possible, and thereby we have prevented accidents. I have known of no accidents to our customers.

24. X Q. You have stated that the injury to your business in consequence of the defendant's road in Broad st. you should suppose to be 10 per cent.; how did you arrive at that conclusion?

Ans. I arrived at that by guessing at it, taking a rough estimate; as far as the ten per cent. is involved, couldn't tell—not positively—don't keep account of those sales.

25. X Q. You have stated that there have been frequent accidents upon Broad st., occasioned by the horses being frightened and running away; how many such accidents have you witnessed personally?

Ans. I could not count them; I can't tell the parties' names, but last summer there was a buggy broken right at 4th and Broad st.; the horse was frightened somewhere above our store—between there and Brook avenue. There was another horse frightened there last summer;

157 came down Broad st.; left the waggon, or part of it, up the street; turned down 4th st., and was caught round about the market on Marshal st. The names of the owners I do not know, but think they could be found out. Those are the only two instances I can call to mind just

now; and within the last six or seven years I have seen horses running up or down the street that I have been told were frightened by the cars.

26. X Q. You cannot recall any instance, then, where you witnessed the accident and knew that it was occasioned by fright caused by the defendant's engines or cars?

Ans. Not from my own observation, for the reason that when such accidents occurred I would be in the house and would not see anything but the horses running by the door.

27. X Q. Are there not daily many vehicles on Broad st. drawn by horses, and a great many persons frequenting the sidewalks?

Ans. There are; and horses frequenting the sidewalks, too, caused by being scared and running away.

28. X Q. Am I to understand you as saying that horses daily frequent the sidewalk of Broad st.?

Ans. No, sir.

29. X Q. What did you mean, then, by your answer to the 27 X Q.?

Ans. I mean that when horses get scared by the cars they have been known to run on the sidewalks.

30. X Q. How many have you ever known to run on the sidewalks in Broad st.?

Ans. Only one.

31. X Q. And did you know, of your own knowledge, that that was frightened by the cars and engines of the defendants?

Ans. No, sir; I was told by others.

32. X Q. Are there not on Broad st. more milliner and fancy and trimmins stores than any other street in Richmond, and are not those stores greatly patronized and frequented by ladies?

Ans. I suppose they are.

33. X Q. How do you account for the fact that such establishments should be located on Broad st., and should be so much patronized and frequented by ladies, if Broad st. is rendered so dangerous by the use of the defendant's engines thereon?

Ans. I don't know, except the street being centrally located, and being wide and level, has its attractions.

And further this deponent saith not.

MAURICE EVANS.

Deposition of W. G. Bradridge, taken 22nd April, 1874, (marked "No. 10.")

1st. Question by counsel for defendants. State where you reside, how long you have resided there, and what is your occupation.

158 Ans. I have resided in the city of Richmond for the last thirty-six years. My place of business is 827 Broad street, and my occupation grocer and commission merchant.

2nd. Question. How long have you been familiar with Broad street, in the city of Richmond, and what has been your opportunities for becoming familiar with it?

Ans. I have lived on Broad street ever since my residence in Richmond, with the exception of about two years—1841 and 1842.

3rd. Question. How does the population of Broad street at this time compare with its population when you first knew it; is it now greater or less than they were then?

Ans. I should think it was five times as great now as then; I can't say positively, but I know it is much greater.

4th. Question. How does the business done on Broad street now com-

pare with the amount of business done on it when you first knew it; is it greater or less now than it was then?

Answer. It is much greater than it was; perhaps more than tenfold.

5th. Question. How does the present value of real estate of Broad street compare with its value when you first knew it; is it greater or less now than it was then?

Answer. I am no real-estate agent, and cannot speak positively; but I have no doubt that its value has increased many fold; its value is increasing every day.

6th. Question. Have you had an opportunity of observing the effect of the use of steam-engines by the R., F. and P. R. R. Company on their road on Broad street? If you have, please state whether this effect has or has not been injurious to the business and value of property on Broad street.

Answer. I have seen it all the time since the road started, and my opinion is that it does not injure the trade or property on Broad street; I think, on the contrary, that it has benefitted both. I lived with Royall Parish, on Broad street between First and Foushee, for two years, who traded largely with mountain wagons, and I have seen as many as twenty-five wagons a day loading and unloading there, and do not remember to have seen any accidents occasioned by the running of the trains. I have lived at my present place of business, 827 Broad street, about twenty-five years, and my conclusion is there are as few accidents on Broad street, considering the population, as on any street in the city.

7th. Question. Is or is not Broad now, and has it not been for many years, very much frequented by vehicles of various sorts drawn by horses, and also by persons walking on the sidewalks?

Answer. I think there is just as much travelling of both kinds on Broad street as on any other street in the city; there is not so much heavy hauling on it as on Cary.

159 Cross-examination:

1st. Question by counsel for plaintiffs. State whether your place of business is east or west of the terminus of the railroad on Broad street.

Answer. A little east of the terminus and on the same square.

2. Question. State, as nearly as you can, the number of feet from the door of your place of business to the place where the engines turn into their depot.

Answer. The nearest curve, judging from the width of Broad street, is about 135 feet; I never measured the distance.

3d. Question. State the number of times during a period of twenty-four hours that the engines of the R., F. and P. P. Co. run up and down Broad street.

Answer. I see three engines with cars attached pass up and down the road every day. The "Agent" draws cars from the depot and runs them back in their proper places several times a day. I am not at my store during the night or early in the morning, and other cars or trains may run out during my absence without my seeing them.

4th. Question. During the period you are at your store will not the engines with the trains attached, together with the "Agent," average once an hour, the "Agent" running the cars backwards and forwards into their proper places, as previously testified?

Ans. They will not.

5. Question. State what that average would be then.

Answer. Between two and three hours, I should think.

6. Question. How long are you at your store?

Answer. I am at my place of business about eleven hours.

7. Question. How far from the depot on Broad street is it to the workshops of the company, or the point where their cars are deposited, beyond the limits of the city?

Answer. I suppose it is about a mile and a half, though I can't say positively.

8th. Question. How do they get their cars between these two points?

Answer. I do not know how they get their cars from the workshops to the depot, not seeing them.

9th. Question. You stated, in your examination-in-chief, that there were not a greater number of accidents on Broad street than upon any other street in the city of Richmond, considering the population; can you or can you not state the number of accidents that have occurred on that street since you have been doing business on the same?

Answer. I cannot; I keep no memorandum of them.

10. Question. Can you not recall any accidents during that time? If so, state at what time it occurred, and to whom, and any other circumstances within your knowledge.

Answer. I remember two accidents: One an old lady many
160 years ago, I do not know how long; one last year, M'r Clemmitt, killed by the street-car.

11th. Question. Do you recollect any other accidents occurring on this street, other than deaths, such as injuries by horses running away, &c., &c.?

Answer. There have been others, but I do not recollect them or to whom they were.

12th. Question. Were you not living on Broad street when M'r James Brown, j'r, was killed by the engine on this road, and also M'r Richard Pulliam?

Answer. I remember M'r Pulliam, but not M'r Brown.

13th. Question. Do you not recollect when a negro boy was killed on Broad street, somewhere between 2nd and 1st, by the name of Harris?

Answer. I do not.

14th. Question. Can you name any street in the city of Richmond, within your recollection, where five persons have been killed from any or from all causes, other than Broad street?

Answer. I cannot remember any at this time.

16th. Question. How, then, do you arrive at the conclusion, testified to in your examination-in-chief, that there are not more accidents on Broad street, considering the amount of business done, than upon other streets of the city of Richmond?

Answer. I have seen more horses run away attached to wagons, buggies, &c., on 9th and Main streets than I ever did on Broad above Ninth.

17th. Question. Charge your memory, and state as far as you can the instances that have occurred on Main street within the last twelve months.

Ans. It is impossible for me to give the instances. I saw one, about three weeks ago, run down Ninth and up Main. About six months ago I saw a butcher's wagon run along Bank to 9th, where it broke and stopped. I think within twelve months I saw one run down 9th to the basin bank, where it broke to pieces.

18th. Question. What is the nature of the business that you do on Broad street?

Answer. Family grocer and commission merchant.

19th. Question. Do you consider that the railroad on Broad street advances your interest in either of these respects, as grocer or commission merchant?

Answer. In both.

20th. Question. In what way does it extend your custom in these two lines of business?

Answer. In bringing produce in the heart of the city and in giving us facilities in shipping goods out of the city. When they stopped running the mail train down to the depot on Broad street I lost nearly all of my custom north of Milford, the trade running to Fredericksburg.

161 21st. Question. Do I understand you to say that they deposit their freights on Byrd street, a point where the passengers are now transferred from the mail and other trains?

Answer. I did not say so.

22nd. Question. Where do they deposit their freights?

Answer. In their depot on Broad street, between 7th and 8th streets.

23d. Question. If they deposit their freights now in the depot on Broad street, where they deposited them before the mail train was changed, how do you account for the farmers north of Milford shipping their freights to Fredericksburg, or such as formerly traded with you, and the loss of your business occasioned thereby?

Answer. My loss is in the selling of goods. When they get off the train on Byrd street they will not come up on the hill.

24th. Question. Do these same parties, formerly trading with you, not now come to Richmond and trade with other parties?

Answer. Sometimes they do.

25th. Question. Has not Broad street by its eligibility on account of grade, width, &c., great advantages for the retail trade?

Answer. It is a fine street for business, but not more so than Main.

26th. Question. How will the value of the retail trade on Main street compare with that of Broad street?

Answer. I have no way of ascertaining, but suppose the trade of Main street much heavier than that of Broad.

27th. Ques. If Broad street, by reason of these advantages spoken of, comparing with those on Main street favorably, how do you account for difference in the trade on the two streets?

Answer. The capital is much greater on Main, buildings better, and Main is more convenient to the country people than Broad, especially from the south and east.

28th. Quest. If Broad street has these advantages spoken of by you, why should not capital be transferred to that street and more eligible buildings be erected for this trade?

Answer. I do not think that Broad street has any advantages over Main street for the retail trade, and I suppose capitalists are going to place their money where they can get the quickest return.

29th. Quest. State how property north of Broad street and west of 8th street compares with property similarly situated south of Broad street, comparing Marshall and Clay on the north with Grace and Franklin on the south.

Answer. I think property on Marshall and Clay, from 8th to 4th, will compare favorably with property on Grace and Franklin; above 4th, on Franklin and Grace, property has advanced much more rapidly than on Clay and Marshall, and that is owing, in my judgment, to the public square, &c., (Monroe Park.)

30th. Quest. Are you not aware of the sale of property made by the

Worthams in the last twelve or eighteen months, on the corner
162 of 1st and Grace; and, if so, has there been any sale of property similarly situated north of Broad street equal in amount? If so, state what property it is, and other property that you may know of having been sold, in order to make the comparison.

Answer. I stated in my answer above that property had not advanced north of Broad, above 4th, as it has on the south. I am aware of the sale by the Worthams. I know of no sale of property north of Broad similar in amount.

31st. Question. You stated that you thought the difference in value between the property north of Broad, and south of Broad and west of 4th, was due to Monroe Park: please state whether Monroe Park affects the value of property on Grace and Franklin streets between 2nd and Foushee.

Answer. I do; twenty-five per cent. or more.

32nd. Ques. Is there a greater difference than twenty-five or fifty per cent. between the property on Grace and Franklin, west of 4th, than that similarly situated on Clay and Marshall?

Answer. It is much greater, and I think it will continue to be greater, as the property north of Broad streets is too near Africa; I mean that the negro population has settled north of Broad street and west of 4th.

33rd. State the distance between Monroe Park and 1st and 2nd, on Franklin and Grace, and the same points (1st and 2nd) on Clay and Marshall.

Answer. It is about seven squares from the park to 1st and Franklin, and 8 to 1st and Grace; about 10 to 1st and Marshall, and 11 to 1st and Clay.

34th. Q. You have stated, in your examination-in-chief, that the business on Broad street has greatly increased during the period of twenty-five years that you have lived on Broad street; is not this true of all other streets in the city, and due to the same causes, namely, the increase of population and the increased facilities for trade afforded by the railroads, &c.?

Answer. It is.

35. Ques. Is your business retail or wholesale?

Answer. Retail.

36th. Ques. Do you or not do a large business with the hands or employees of this road in your retail line?

Answer. I do not believe I sell them two hundred dollars' worth of goods during the year.

37th. Ques. Does not this retail business of yours include the sale of tobacco, cigars, &c.?

Answer. It does.

38th. Ques. Is not this one of the points of attraction of that trade which you formerly did with the passengers coming in on the passenger trains of the R., F. and P. R. R. Co., spoken of in the previous answers?

163 Answer. I hardly ever get a customer in this particular now, except by letter; I mean from persons north of Milford.

39th. Ques. Are you not aware that the parties engaged in the retail trade on Broad street, especially those in the dry-goods business, whose customers mostly come in vehicles, are very much opposed to the continuance of said road on Broad street, i. e., to the company's using steam-engines on their road on Broad street?

Answer. I have never had but one house to say a word to me about it.

40. Question. How far is your store from 9th and Broad?

Answer. I am the third door from Ninth.

41st. Question. Is not the grade from Broad down 9th to Main very steep; is not the grade down Main to 17th also very steep, except that part which lies between 9th and 12th?

Answer. I should say there was sixty feet grade from Broad to Main. I do not consider the grade on Main very steep; I do not know exactly what it is.

Re-examined:

1st. Quest. by counsel for defendant. Has it not been a common thing, since you have lived upon Broad street, for large funeral processions to go up Broad street?

Answer. It has.

Recross-examined:

1st. Question by counsel for plaintiffs. Are they in the habit of doing so now?

Answer. They are; I went in one last week.

2nd. Ques. Are they generally negro processions or not?

Answer. Both white and colored.

And further this deponent saith not.

WM G. DANDRIDGE.

Deposition of Tho's L. Courtney, taken 22d Ap'l, 1874, (No. 10.)

1st. Question by counsel for defendant. State where you reside, how long you have resided there, and what is your present occupation.

Answer. I reside in Richmond; been living there since 1842; and my present occupation is that of assistant superintendent, purchasing agent, &c., &c., of the Richmond, Fredericksburg and Potomac Railroad Company.

2nd. Ques. How long have you been familiar with Broad street, in the city of Richmond, and what have been your opportunities for becoming so?

Answer. I have been here since 1842, and have been doing
164 business in various ways on Broad street during all that time, except when I was in the army, which was twelve months.

3d. Question. How does the population of Broad street at this time compare with its population when you first knew it; is it greater or less now than it was then?

Answer. It is much greater—I believe at least ten times as great now.

4th. Ques. How does the business done on Broad street now compare with the business done on it when you first knew it; is it greater or less now than it was then?

Answer. It is much greater. I think there are at least ten times as many business houses on Broad street as there were when I first knew it. When I first came to Richmond to live business was all done from 4th street up to Brooke avenue.

5th. Ques. How does the present value of real estate on Broad street compare with its value when you first knew it; is it greater or less now than it was then?

Answer. I have never dealt in real estate on Broad street, but my impression is that it is much greater.

6th. Ques. Have you had an opportunity of observing the effect of the use of steam-engines on their road in Broad street by the R., F. and P. R. R. Co.? If you have, please state whether that effect has or has not been injurious to the business and property on Broad street.

Answer. I have had opportunities of observing the effect of steam-engines on Broad street by the company. In 1842 I commenced the drug business with J. A. Ragland on Broad street, just above 2nd, where I lived two years; during which time I have seen from twenty to twenty-five mountain wagons at one time loading and unloading from that point to Brook avenue. I never knew any of the teams to run off or any accident to happen to them or their drivers. After that I was engaged in the dry-goods business about fifteen years, between 6th and 4th on Broad street, in different houses, during which time I have seen a great many carriages, both from the town and country, at the different stores, and never knew any accident caused by the trains of the R., F. and P. R. R. Co. I do not think it has been injurious to business, but has been an advantage to it by bringing trade to that point. Nor has it been injurious, in my opinion, to the property on Broad street, but has increased its value by bringing business into that street.

7th. Quest. State, if you know, whether, since the war, many persons from the country come to Richmond in their private carriages and do their shopping in them on Broad street, or on any other street in Richmond.

Answer. Being few, I seldom ever see persons coming to town in their private carriages to do shopping now; they did before the war.

8th. Ques. State, if you know, what is the present condition of teams and carriages in the country; are they abundant or scarce?

165 Answer. As far as my knowledge extends, teams and carriages in the country are very scarce compared with what they were before the war.

9th. Ques. Is or is not Broad street now, and has it not been for many years, very much frequented by vehicles of various sorts drawn by horses, and also by large numbers of persons walking on the sidewalk?

Answer. It has been and is now.

10th. Ques. State, if you know, whether the accidents on Broad street, caused by the use of steam-engines on the road of the defendants, have been very numerous or not since you first knew that street.

Answer. They have not.

11th. Ques. When did your connection with the R., F. and P. R. R. Co. commence?

Answer. In December, 1862.

12th. Ques. Since that time have you or not had anything to do with the running of the engines or trains of the defendants; if you have, state what you have had to do with them?

Answer. I have had a great deal to do with them as superintendant, &c.; I have to see that they arrive promptly and depart at the proper time, and that the employees do their duty towards the travelling public; when there are any extra trains to be run, &c, I have to see that the trains are provided, &c.

13th. Ques. During that time have you or not had occasion to send and bring upon your trains a large number of soldiers and munitions of war, and have you not also had occasion to carry and bring on your trains, to and from the Va State agricultural fair, a very large number of persons on improvised trains; if you have, state whether you have been enabled to do so without accident.

Answer. I have, during the war; we were frequently called upon at irregular times and short notice to carry large numbers of troops and great quantities of supplies and munitions of war for the army, without remembering to have had a single accident; during the agricultural fairs we carry to and from the fair-grounds over twenty-five thousand persons,

each way, in open flats with benches on them, and have never had a single accident to happen inside of the city limits.

Cross-examination:

1st. Question by counsel for plaintiffs. How long since you have seen twenty-five country wagons, or six, or three, assembled at one point, trading on Broad street?

Answer. The mountain wagons of which I spoke do not now come to the city, and have not for many years; I mentioned these wagons in my answer to the 6th question.

And further this deponent saith not.

T. L. COURTNEY.

166 *Deposition of J. B. Kidd, taken 23 of April*, 1874.

1st. Question by the counsel for the defendant. Where do you reside, how long have you resided there, what is your business, and where is it carried on?

Answer. I reside in Richmond City; I have lived in said city since the fall of Richmond in April, 1865; my business is that of grocer and commission merchant, and my business is carried on at 717 Broad street.

2nd. Question. How long have you been familiar with Broad street, in the City of Richmond, and what have been your opportunities for becoming so?

Answer. Having been engaged in business on Broad street for eight or nine years, I have had good opportunities for becoming familiar with that street.

3rd. Question. Have you had an opportunity of observing the effect of the use of steam-engines by the defendants upon their road in Broad street? If you have, please state whether that effect has or has not been injurious to the business and property on Broad street.

Answer. I have had opportunity of observing the effect of using steam-engines; I regard the use of engines as of some disadvantage to the street, but think the evil more than counterbalanced by the trade brought into the street by the said road.

4th. Question. Is or is not Broad street now, and has it not been ever since you knew it, very much frequented by vehicles of various sorts drawn by horses, as well as by persons on foot?

Answer. Unquestionably.

5. Question. During the time of your acquaintance with Broad street, have or have not the accidents thereon, occasioned by the use of steam-engines on the road of the defendants, been frequent?

Answer. I have witnessed none that I remember; I witnessed the killing of M'r Clemmitt by the street car, but I do not know that it was occasioned by the use of engines on the defendants' road.

6. Question. Do you keep a horse and vehicle for the purpose of your business on Broad street; if so, how long have you kept it?

Answer. I have had them ever since I have been in business on Broad street.

And further this deponent saith not.

J. B. KIDD.

Deposition of J. V. L. McCreery, taken 23d Ap'l, 1874, (*No.* 10.)

1st. Question by counsel for defendants. Where do you reside and what is your business?

167 Answer. I reside and do business at the corner of 8th and Broad streets, in the city of Richmond, 719, and my business is that of hardware merchant; and I have done business for the last eight years on Broad street, and lived there for the last six years.

2nd. Question. Have you had an opportunity of observing the effect of the use of steam-engines by the defendants on their road in Broad street? If so, state whether that effect has or has not been injurious to the business and property on Broad street.

Answer. I have had one of the very best opportunities of observing the effect of the use of engines, as far as regards my own business, that of hardware merchant. I will state that I never have seen an instance where it interfered with my busfness in the least. I consider that my business has been greatly increased by this road, fully one-half of my country business coming down that road. I have a good many country customers who come into town in wagons, carriages, and carts, and drive up to my door, and I have never known any accident to happen to them from the use of the engines, though they sometimes are left without drivers. I do not know what effect the use of engines has had upon the property on Broad street, not being a property-holder. My business, that is the business that I did through the instrumentality of the road, was much better when all the trains came down Broad street, and before they were removed to the Union depot on Byrd street.

3rd. . Is not and has not Broad street been, ever since you first knew it, *been* very much frequented by vehicles of various sorts, drawn by horses, and also by persons on foot?

Answer. I should most assuredly say it was; probably as much so as any street in town. I do not think there are as many heavy wagons running on it as upon Cary street; but light wagons, carriages, and vehicles are as numerous on Broad street as on any other in the city.

4th. Question. Can you state of your own knowledge whether the accidents on Broad street, occasioned by the use of engines on the defendant's road in that street, have been numerous or not during the time that you have lived on that street?

Answer. I cannot, because I have never witnessed any accident on said street occasioned by the use of engines on the said road, as far as I know.

And further this deponent saith not.

J. V. L. McCREERY.

Deposition of Conway R. Howard, taken 23d Ap'l, 1874, (*marked* "*No.* 10.")

1st. Question by counsel for defendants. Where do you reside, and what is your business?

Answer. In Richmond; my business is that of civil engineer.

168 2nd. Question. Are you familiar with the railroads in the city of Richmond and streets on which they run? If so, be good enough to state what railroads there are in the city of Richmond, what streets are occupied by them, and for what distances, and also the width of said streets.

Answer. I know what railroads are in the city of Richmond, and for the most part on what streets they run. The railroads are the Chesapeake and Ohio, the Richmond and York River, the Richmond and Danville, the connection between the two last-named roads, the Richmond and Petersburg, the Richmond, Fredericksburg and Potomac, and the connection between the two last-named roads. The C. and O. Railroad enters Concord street, (40 f't wide,) runs down Concord to

Broad st., (about 400 f't north of Clay street;) thence across two squares (about 800 f't) to Marshall street; thence down Union street (40 feet wide) to Grace street. From n. Marshall to n. Grace is about 775 feet. The connection between the R. and D. and Y. R. Railroads passes down Dock street from 14th nearly to 17th street; for this distance Dock st. is fifty f't wide; thence railroad passes down Winton alley, (north of 17th, 35 feet wide; south of 17th, 30 feet wide;) thence down Dock street to half-way between 22d and 23rd streets, (width of Dock st. regularly increasing from 45 to 100 f't;) thence to Y. R. depot, just below corner of 23rd, on Dock st.—whole distance from R. R. crossing north of basin, I mean the point where R. R. leaves Dan. Co.'s lot to Y. R. depot, about 3,000 f't; from crossing north of basin to R. and D. R. R., about 300 f't. The R., F. and P. Railroad runs from depot on the corner of 8th and Broad st's up Broad street to and beyond the corporation line; width of Broad street about 120 f't. I can give no special information as to distances on and width of other streets occupied by railroads in Richmond.

3rd. Question. Are steam-engines used upon all of the said railroads within the city of Richmond?

Answer. They are.

4th. Question. Are you acqu'inted with any other cities within the United States in which railroads are used with steam-engines upon their streets? If so, state what cities and what railroads are so used, and the extent to which they are so used.

Answer. I am acquainted with several other cities in the United States in which some of the streets are occupied by railroads worked by steam-engines; for special information in regard to which I would respectfully refer to my report of the same, made in February last to the sup't of the R., F. and P. R. R., which is herewith submitted as a part of my answer to the last question; which report is in the words and figures following, to wit:

169 RICHMOND, *February 4th*, 1874.

Maj. E. T. D. MYERS,

Eng'r and Sup't R., F. and P. R. R.:

DEAR SIR: The following information in relation to the occupancy of streets by railroads in New York, Philadelphia, and Baltimore was obtained partly by personal observation and partly from the gen'l manager's office in each of the depots mentioned. In the accompanying city maps, on each of the railroads referred to, the routes traversed by trains drawn by ordinary locomotive-engines are indicated in red, by drawing-engines in blue, and by railroad-cars moved by horse-power in green.

In New York, from the Grand Central depot northward, the Hudson River, Harlem, and New Haven Railroads, now occupying 4th avenue, are to pass partly by tunnels under and partly by viaducts over the cross streets, the city agreeing to pay one-half of the cost of the necessary work, which was estimated at $3,000,000.

One branch of the Hudson River Railroad entering the city reaches 11th avenue at 58th st., opposite south end of Central Park, runs down 11th avenue to 33d st., thence across two blocks to depot at corner of 30th st. and 10th avenue, a distance of about one mile and a half, along streets closely built up for the greater part of the way. Over this route thirty trains pass each way daily. The watchmen between this depot and 52nd st., for which distance (about 1 mile) the speed of trains is limited to 8 minutes, or 7½ miles per hour, are ten in all, three of whom

are stationed at 30th st., near depot, and one at each of the following streets: 32, 33, 35, 40, 42, 49, and 52. South of the depot at 30th street the same railroad continues down 10th avenue to West st., down West street to Canal street, along Canal street to Hudson st., and down Hudson st. to depot at S't John's Park, a distance of about two miles. Between the depots at 30th st. and S't John's Park about seventeen trains are drawn each way daily by drawing-engines, at a speed limited to 5 miles per hour, and each train preceded by a flagman on horseback. In addition to the horseman, one watchman is stationed at the corner of West and Canal st's and one at corner of Canal and Hudson st's.

On the Northern R. R. of New Jersey, through Jersey City, there are gates at the street-crossings, and the speed is limited to 15 miles per hour.

In Newark there are flagmen required at all crossings: speed limited to 15 miles per hour.

Through Camden each train is required to be preceded by a flagman on horseback.

In Philadelphia the main depot of the Philadelphia and Read-
170 ing R. R. is at the corner of 13th and Callowhill street. From this point to 25th st., a distance of about one mile, there are four tracks along Pennsylvania avenue, which is closely built up on both sides. Seven regular trains run each way daily, besides about eight coal trains.

The depot of the Germantown branch of the P. and R. R. R. is at the corner of 9th and Green streets. For nearly a mile along 9th st., closely built up on both sides, more than fifty passenger trains run each way daily. One watchman is required at each crossing. The speed of the trains along the greater part of this distance is about ten miles per hour. On the route of the P. W. and B. R. R., from its depot at corner of Broad st. and Washington avenue to Gray's Ferry, between the depot and the arsenal, a distance of about one mile, a watchman is required at each crossing. The time between the depot and the arsenal is about ten miles per hour, and more than fifty trains run daily. At the depot is a flying switch. From this depot to the wharf, (about 1¼ miles,) along Washington avenue, there are no watchmen stationed at the street-crossings, but each train is required to be preceded by a flagman on horseback. Steam transportation, with ordinary locomotive-engines, is used throughout Washington avenue from the arsenal to the wharf.

In Baltimore, from the depot of the P. W. and B. R. R. on President street, for about one mile along Canton avenue, ten trains run each way daily. There are no watchmen at street-crossings, and instead of a flagman on horseback preceding each train, a watchman is stationed on the pilot of each engine. The speed is limited to six miles per hour. From the Camden depot of the Baltimore and Ohio R. R. passenger trains are required to be preceded by a flagman on horseback, in addition to a watchman being stationed at each street-crossing. Speed of trains is limited to six miles per hour. On Pratt street steam transportation is allowed as far east as Howard street, or for more than half a mile; most of the steam-running power is done at night. An average of 100 freight cars daily are moved by horse-power from Mount Clare station, along Pratt street, to the precinct street depot of the P. W. and B. R. R., a distance of about 1½ miles, through one of the principal business streets of the city.

Very respectfully,

CONWAY R. HOWARD.

Cross-examined:

1st. Question by counsel for plaintiffs. State, if you please, whether the C. and O. R. R. does not enter Richmond in the valley of Shockoe Creek, passing through what was formerly called "Butchertown," through no principal or important street, sparsely populated, and principally by negroes and white persons of the lowest class.

Answer. From north Marshall to north Grace, about 775 feet, the
171 street is mostly closely built up on both sides, and for a space beginning about two blocks north of Marshall, and extending northeast for about 500 feet, the street is built up on both sides, and mostly with occupied dwelling-houses; through these portions of the street I consider it neither unimportant nor sparsely populated; otherwise my answer is yes.

2nd. Question. Describe the buildings, if you please, which you have referred to in your answer.

Answer. Near Broad street the houses are mostly buildings belonging to the C. and O. R. R. Co.; north of Marshall the buildings are occupied by negroes and white persons of the lower class; the buildings are mostly small and somewhat dilapidated wooden houses, except those belonging to the railroad company, which are mostly brick.

3rd. Question. How far does the Danville Railroad come into the city of Richmond, and at what point?

Answer. At a point nearly opposite the foot of Virginia street, running about 350 feet from the main bridge to the tide-water connection bridge; thence to the right of Virginia street for about 375 feet, parallel to Virginia street and through a lot owned by the company. The river bridge is little west of the line of Virginia street.

4th. Ques. Is not the passenger depot, and are not the offices of the president and directors, in a building immediately on the side of the railroad after it crosses the James River bridge, and very close to it?

Answer. They are.

5th. Question. Is not that building located in great part upon made earth—made since the construction or erection of the Danville road by deposits upon the shore of James River and in the water near the shore?

Answer. I think it is; but I don't know anything about it.

6th. Ques. Does the Danville Railroad run into or across any important street in Richmond?

Answer. It does not; I mean the Danville Railroad proper, and not the connection between the Danville and York River roads.

7th. Ques. Are there any buildings used for stores or dwellings at or near the Danville depot, that you have spoken of, or at its terminus in the lot of the company, of which you have spoken? If there are, please to describe them.

Answer. I think there are none such very *very* near the Danville depot, but there are brick buildings, for the most part if not altogether mercantile, on the lots adjacent to the lots spoken of as owned by the company, separated in all cases, however, from said lot of the company by a street or alley.

8th. Ques. You have spoken of the York River Railroad; please to state at what point it enters the city of Richmond, how far it runs into the city, and describe the nature of the ground over which it passes, whether a street or not; and if a street, what sort of a street;
172 whether it is populous or not, and what is the character of the buildings upon it.

Answer. The *North* River depot is just below the corner of 23rd street

on Dock street. I do not know the exact point where the road enters, nor any of the details specified in the above question.

9th. Ques. Is there anything between the depot and the railroad leading to it and the dock, after it crosses Rocket's street, but Dock street?

Answer. I think not.

10th. Ques. What is the nature of the ground north of the railroad and the depot between the points last indicated; is it or not a very high bluff?

Answer. The railroad is near the base of the bluff, averaging perhaps thirty feet high on the lot of which Rocketts street runs, diverging from the railroad about 100 yards directly opposite the York River depot.

11th. Question. Will you state now what is the nature of the connection between the York River and Danville roads; over what part of the city it passes, for what distance, and whether the propelling power used upon it is a steam-engine or not?

Answer. I refer to my answer to the 2nd question-in-chief as an answer to this question. I am not certain whether steam-engines are used upon this road or not, but think they are.

NOTE.—Mr. Lyons asks the witness, as soon as he can, to make a diagram of the route of the R. R. described in this answer, and file it as a part of this deposition.

12th. Question. Please to describe the character of the buildings and population along the route of this connection R. R.?

Answer. I cannot give details of buildings along this route, nor the character of the population. I know that Dock street is a business street, and that a large amount of hauling is done on that portion along which this route runs.

13th. Quest. You have referred to report made by you to the R., F. and P. R. R. Co.; did you make that report upon your personal observation and the examination of the matters and things described in it?

Answer. Partly from personal observation and examination and partly from information given by the officials of the roads mentioned.

14th. Question. At whose instance and request, and for what purpose, was it made?

Answer. At the instance of Major E. T. D. Myers, sup. of R., F. and P. R. R. Co., and for the purpose of comparing the occupation of streets by railroads in various cities with similar occupation of streets in Richmond.

15th. Question. Do you know whether it was not made, or that you were employed to make it for the purpose of being used as evi-
173 dence in this cause, or in the case of the city of Richmond against the defendants in this cause?

Answer. I was informed by Major Myers, and so understood, that it was to be used in the case of the city of Richmond against the company.

NOTE.—The plaintiffs except to the said report as evidence in this cause, because it is in part hearsay and is ex parte entirely, and because no deposition which was prepared before the witness is put under examination is competent evidence.

15th. Ques. Can you describe the character of the population, and the buildings, and the business done upon any street in New York through which a railroad is worked by steam-engines?

Answer. I cannot.

17th. Ques. Can you describe the character of the street through which the Baltimore and Ohio R. R. is worked by steam in Baltimore, and the character of the buildings and population upon the said street and the business done thereon? If so, please do it.

Answer. I am not sufficiently familiar with the streets in any of the northern cities through which railroads run to describe the buildings or the population; but I can give a comparison of the business done on some such streets with that done upon similar streets in Richmond.

Re-examined:

1st. Question by counsel for defendants. Please give the comparison referred to in your last answer.

Answer. On 11th avenue, New York City, for nearly a mile, along which the Hudson River R. R. passes, the business is probably as great if not greater than that of any street in Richmond; and from the Hudson River depot, on 30th street, along 10th avenue, West street, Canal street, and Hudson street, for the most part the business is larger than on any street in Richmond. On Pratt street, in Baltimore, for more than half a mile along which the B. and O. R. R. runs, the business is larger than on any street in Richmond. Canton avenue, in Baltimore, along which the P., W. and B. R. R. runs for about a mile, is also a business street, but I do not know certainly to what extent.

2nd. Ques. State, if you know, the grade of Broad street on both sides of the Cnes. and O. R. R. where it is crossed by the said road, and also whether persons passing along Broad street can readily see the trains of the said road before they cross Broad street.

Answer. Immediately west of the C. and O. R. R. the grade of Broad street is very steep, probably 5° rising westwardly; immediately east of C. and O. R. R. there is a rising grade eastwardly not so steep;
174 passing down Broad street, persons at the distance of 100 feet from the C. and O. R. R. probably could not see a train on either side of Broad street for a distance more than 20 feet from the street; coming up Broad street towards the C. and O. R. R. from the east the view is impeded on the north side to about the same extent; on the south side, it being more open, a train could probably be seen further from the street.

Recross-examined:

1st. Question by council for the plaintiffs. Is your answer to the first question propounded by the counsel for the defendants on re-examination given from your report, to which you before referred, or from your personal knowledge and present recollection?

Answer. From personal knowledge and present recollection, aided by the report referred to above.

NOTE.—Counsel for the plaintiffs except to the answer to the 1st question on re-examination as incompetent.

And further this deponent saith not.

CONWAY R. HOWARD.

J. V. L. McCreery recalled for cross-examination, 25th April, 1874.

1st. Question by counsel for plaintiffs. What effect upon your business would a change of the tractile or propelling power of the railroad from locomotive steam-engines to horses have?

Answer. I do not know that it would have any effect if all the trains which are now brought in were actually brought in by horses.

2nd. Question. What effect does the use of locomotive engines, thirteen a day, have upon the trade and business of Broad street above you?

Answer. I don't know, sir; I can only speak of my own business.

3rd. Ques. Is not your store on the south side of Broad street, at the corner of 8th and Broad, immediately opposite the depot of the railroad company?

Answer. Yes, sir; immediately opposite.

4th. Ques. Do you not ascribe the benefit which you derive from the railroad to the fact that the cars stop opposite your store, and the passengers there get in and out?

Answer. In part, I do. I consider the fact that the freight depot is immediately opposite me as one thing which benefits my business, many customers dealing with me to save the drayage which would have to be paid by houses in my line further from the depot.

5th. Ques. Do you deal much or at all with the railroad company; and, if at all, to what extent?

175 Answer. Yes, sir; I deal with the railroad company, selling them from fifty to one hundred and fifty dollars' worth each month.

6th. Ques. Would that business be lost to you if you were located further from the depot, and the other business, of which you have spoken, in which the dealing is influenced by a desire to save drayage?

Answer. I should think I would loose a portion of both.

7th. Ques. Would a hardware store at the western terminus of Broad street do as well, other things being equal except the terminus and depots of the railroad, as you do?

Answer. I could not give a definite answer to that question; I could only say I certainly would not like to try it.

8th. Ques. Why would you not like to try it?

Answer. Because I have some doubt in my mind whether I would do as well, and might loose a greater portion of my business.

9th. Ques. Do you not believe that you would loose the greater portion of your business?

Answer. I believe that I would loose the greater portion of my business.

And further this deponent saith not.

J. V. L. McCREERY.

J. B. Kidd recalled for cross-examination, April 25th, 1874.

1st. Question by counsel for plaintiffs. How far is your store from the store of Mr McCreery, the last witness?

Answer. It is the next door.

2nd. Ques. How do you know that the injury to the trade of Broad street, or the business of said street, which is occasioned by the transit of railroad-cars through it, is more than compensated for by the trade which they bring it?

Answer. I merely spoke for myself. I derive a very considerable proportion of my trade, directly or indirectly, from the Fredericksburg Railroad on the location of its depot on said street, and should regret the removal of it as a serious blow to my business—I refer to the location of the railroad running down said street in the vicinity of my store. I have inferred that the withdrawal of the engines from the street would necessitate the removal likewise of the railroad and depot.

3d. Ques. But suppose the railroad and depot are not removed, but the cars are brought in by horses, would you then sustain the apprehended injury, do you think?

Answer. I repeat that I have paid no special attention to that question. So far as I have thought of it I have formed the opinion that the injury to the street by the passage of the trains through it was more imaginary than real. I cannot see how I would be injured if the trains were brought in, as I derive no special advantage from the engines.

4th. Ques. Do you not ascribe the benefit that you derive from
176 the railroad mainly to the fact that it stops and puts out its passengers and freights opposite to your store?

Answer. I have reason to believe that other groceries on Shockoe hill, but not as near the depot as myself, get more of that trade than I do. I mean to say the trade is not necessarily controlled by the location of the depot. I believe I do get what business I get from the road mainly from the fact that its terminus and depot are near my store.

5th. Ques. Please state who those grocers are that get more of the railroad trade than you do.

Answer. W. G. Dandridge & Co., Shields & Cary, Geo. A. Hundley & Co., Wm H. Tatum, Glazebrook and Thomas, C. L. Todd; all, I suspect, get as much or more of that trade than I do.

6th. Ques. Please state where each of those houses do business.

Answer. Wm G. Dandridge & Co., Broad near 9th; Shields & Cary, Broad between 6th and 7th; Mess'rs Tatum and Hundley on same street, between 5th and 6th; Glazebrook & Thomas, Brook avenue near Broad; Charles L. Todd, 6th street corner of Clay, near the second market.

7th. Ques. Are there any other retail groceries on Broad street except those you have named and yourself?

Answer. There are.

Re-examined:

1st. Question by counsel for the defendants. Is there or is there not a considerable trade brought to Broad street by the road of the defendants?

Answer. I am sure that there is. I remember that there was more *more* when the mail trains of this road were brought to the depot at the corner of 8th and Broad, opposite my store, than now when only the accommodation and freight trains are brought to this depot. When those trains were removed from Broad to Byrd street, I was living with E. W. Tompkins, at the same stand and in the same business, and distinctly remember the injury resulting to his business from the removal of these trains by loss of trade—I mean the same stand which I now occupy, and in my same business, that of grocer and commission merchant.

2nd. Ques. Are there not now a large number of persons who come down on the accommodation train and do their marketing at the new market and their shopping on Broad street?

Answer. I know of many such persons, many baskets from the market for persons on the line of this road being left at my store to be put on the train almost every day: there are bundles of various kinds of goods left at my store for the same purpose.

3rd. Ques. If the defendants were to remove their road and depot from Broad street, and deliver their passengers and freight at the Byrd
177 street depot, what would be the effect upon the trade of Broad street?

Answer. Very injurious, I think.

Recross-examination:

1st. Question by counsel for plaintiffs. What is the kind of trade that the Fredericksburg Railroad brings into Broad street?

Answer. Every kind.

2d. Ques. Please describe some of these kinds.

Answer. Trade for dry-goods, shoes, groceries, hardware, millinery goods, &c., &c.; such things as the people of the country want.

3d. Ques. You mean that the persons coming into Broad street by the trains buy those things; you do not *not* mean that the trains bring the trade, do you—I mean bring those things in?

Answer. I mean the trains bring people who buy such things—the accommodation trains; at the same time the country people bring with them eggs, butter, chickens, &c., and other farm products; the freight trains, of course, are laden with grain, cattle, fruits, &c.

And further this deponent saith not.

J. B. KIDD.

Deposition of A. W. Garber, taken on the 25th of April, 1874, (*No.* 10.)

1st. Question by counsel for the defendants. Where do you reside, and what is your occupation?

Answer. I reside at 504 Grace street, Richmond, and am engaged in transferring passengers and baggage to and from the various depots, and also in selling railroad-tickets.

2d. Ques. How long have you been engaged in that business in the city of Richmond?

Answer. Since August, 1865.

3d. Ques. In the course of your business have you during the last nine years had occasion to use a number of vehicles drawn by horses on Broad street?

Answer. I have used them every day since August, 1865, the nature of my business requiring me to take passengers to and from the depot on Broad street until they moved their mail train to Byrd street, and to some extent now for the passenger accommodation train.

4th. Ques. During that period did you or not find Broad street a very unsafe place for vehicles drawn by horses, in consequence of the use of steam-engines on the railroad of the defendants?

Answer. No, sir; I never had any accident in consequence of the use of steam-engines during that time that I am aware of.

178 Cross-examined:

1st. Ques. by counsel for plaintiffs. When were the mail trains removed from Broad street to Byrd street?

Answer. I do not remember certainly, but I think it was in 1868.

And further this deponent saith not.

A. W. GARBER.

Deposition of W. F. Peters, taken April 17th, 1874, (*Number* 10.)

W. F. Peters, witness of lawful age, first duly sworn, deposes:

1. Quest. Where do you live, and what is your business?

Ans. I live at 121 Grace st. I run on one of the street-cars, and have been in that business seven years.

2. Quest. Were you driving the car on the day that M'r Thomas Clemmitt was killed?

Ans. Yes, sir.

3. Quest. Was M'r Clemmitt in the car?

Ans. I don't know whether he was or not; I have heard he was; I was not driving the car that killed M'r Clemmitt, but the one which came up town to meet it.

4th. Quest. State, if you can exactly, the circumstances which *lead* to the death of M'r Clemmitt.

Ans. When I came up town and turned off of 9th st. on to Broad, I saw the driver of No. 11 car about 7th st. I saw two engines near his car, and I saw he was in trouble with his horse. I then drove on up and got near the corner of 8th and Broad. I saw the switch—the turnout—that turned me down 8th st. was wrong; my car being very full of passengers so as I could not pass out through them, *so* I got out over the front of my car down on the ground, and fixed the turnout; then I stepped upon the pole, just getting on my car again. I looked up the street; I saw the horse of No. 11 car come pitching as hard as he could run, with the car to him. I barely had time to get off of the track with my car. I don't think that No. 11 car missed No. 2 more than six inches. I didn't see the car when it ran over M'r Clemmitt, but I saw him, I suppose, in two seconds after it did run over him.

5. Quest. Do you know by which car M'r Clemmitt was killed?

Ans. O yes, sir; he was killed by No. 11 car.

6. Quest. Did you see the body immediately after it was killed; and, if you did, how long after?

Ans. I saw him before the breath was fully out of his body.

7. Quest. Were you upon the front of the car which you were driving?

Ans. Yes, sir.

179 8. Quest. Did you see M'r Clemmitt before he was killed?

Ans. If I did I didn't know it *it*. I didn't know him.

9. Quest. How was M'r Clemmitt's body lying when you first saw it; was it on the R. R. or off the R. R.?

Ans. It was on the R. R., sir, right between the two rails, with his head down the street. His head was bursted all to pieces, and his brains strewed in all directions. It must undoubtedly have been done by the wheel of the car.

10. Quest. Were you acquainted with the horse attached to car No. 11? And if you were, state how long you had known him before this accident, what you have known of him since, and whether he was and is a gentle horse.

Ans. I was acquainted with that horse for just about two months before the accident; he had been working to the cars regularly during that time. I never drove the horse myself, but I never heard any complaint about the horse before this accident. After the death of M'r Clemmitt the company thought proper to not use this horse any more, so they sold him and I bought him myself. I kept him about three months, and drove him time and again with my wife and children out in the neighborhood of Hanover C. H.; he was just as reliable a work-horse as I wanted to drive. After this I sold the horse to M'r R. E. Edmonds, of this city, warranted to be a reliable work-horse, giving him one week's time to try him satisfactorily; so he gave satisfaction and they kept him

Cross-examination:

1. X Q. You say you have been driving in the street R. R. cars for seven years; during that period how many serious accidents have occurred upon the street R. R.?

Answer. No more than four, I suppose, of interest.

2. X Q. State what they were, upon what part of the road they occurred, and the circumstances of each of them.

Answer. One of them is M'r Clemmitt's case; the second was my own child, a little boy going on five years old. I had him standing on the front of the car, on Sunday, coming in from Hollywood. Just when I

turned off 1st st. into Broad, going towards Brook avenue, just at that time there came down a train of cars on the Fredericksburg R. R.; frightened my horses very much. I was giving my whole attention to the horses, as they were trying to run away from the railroad cars. During that time, by some means or other, my child fell off the car, and *the car and* it (the street-car) passed over him—both wheels—taking off his right leg about two inches below the knee. My child recovered and is doing well now, but it took his leg off. The next accident after these was a youth employed on the road, about sixteen years of age, named Robert Crafton; that was on Sunday. As one of the cars was
180 running up Main street, near 9th, he went to jump from the ground into the car; he missed his foothold and run his foot under the car up near the instep; both wheels of the car passed over his foot and ankle; very nearly took it off; he got well and is on the road yet. Fourth accident: Some time after this a colored man, employed at the stable of the city railway, by the name of William Winston, was standing on Adam st. one Sunday evening as the cars were going into the stable. The man aimed to jump on the car; he missed his foothold and ran his leg under the car; both wheels passed over his leg about half-way between the foot and knee, crushing it. Dr. Thomas was called and rendered proper assistance. From there he was carried to the medical college, where he lived about ten days and died from the lock-jaw. Our stables are near the corner of Adams and Leigh.

Redirect examination:

11. Q. When you say that four accidents have occurred, do you mean to say that none but four have occurred, or that they are all that you know of?

Ans. They are all that I know anything about, but I know that they are all of any interest.

12. Q. Do you know anything of accidents occasioned on Broad st. by the R., F. and P. R. R. Co.?

Ans. I don't, sir, except the two cases I have already stated, of M'r Clemmitt and my son.

And further this deponent saith not.

his
W. F. + PETERS.
mark.

Witness: JO. LANE STERN.

Deposition of A. P. Fox, taken April 17th, 1874. (*No.* 10.)

1. Quest. Where do you reside, what is your business, and where do you carry on business?

Ans. I reside on Grace, corner of Adams; I am a dry-goods merchant, at the corner of 4th and Broad sts.

2. Quest. State whether if you know, of your own knowledge, of any accident on Broad st., in consequence of the running of cars in that street by steam; if so, what?

Ans. I saw in 18— a white woman knocked down by an engine and the wheels passing over her legs, and so mangled as not to be able to rise, and was taken up and started to the poor-house; but I understood she died before she reached there.

3. Quest. State as minutely as you can how the accident occurred.
181 Ans. The woman had on a long-eared bonnet; she was passing obliquely across the track when she was struck by the engine and knocked down. I learned she was deaf. She was coming from market.

She was immediately in front of our store on 4th st. when the accident occurred.

4. Q. Is or is not the use of steam engines on the R. R. of the R., F. and P. Co. injurious to the business of Broad st., as well as dangerous to the lives and persons of the people frequenting the street?

Ans. I am decidedly of the opinion that it is in both cases detrimental to business and injurious to persons. I have lived on the street since 1836. After an experience of thirty-eight years, with an interval of three years, this is my opinion. I saw a carriage with three ladies, in 18—, the horses taking fright from the approach of an engine on Broad st., start from our store at a rapid pace, and, running a square and a half, one of the wheels of a carriage coming in contact with a tree, knocked the wheel off, by which accident one of the ladies was very much hurt, very seriously injured, thereby proving a decided disadvantage to the trade of the street from these engines passing; and, in addition, a few weeks ago, M'r's Gen'l Johnson told me she had instructed her driver not to bring the horses on Broad st. This is one instance. I have heard many more. M'r's Johnson gave as a reason for not bringing the horses, the fear of the engine. My interest, in a business point of view, is identified with Broad st. and its prosperity, and I am decidedly of the opinion that there would be an improvement in the value of real estate, and of business on the st. by the removal of these engines therefrom.

Cross-examination by M'r Steger:

1. X Q. When was it that you saw this white woman knocked down in Broad st.?

Ans. I can't state the year, but I think it was since 1850.

2. X Q. You said that the lady in the carriage was very much hurt; will you be good enough to state the extent of her injuries and when that accident happened?

Ans. It happened between 1840 and 1850; her scalp was very much hurt, the skin being *up*braided and was bleeding, and her shoulder was very much bruised, but not dislocated or broken, to my knowledge.

3. X Q. Do you know anything of the horses which were hitched to the carriage; were they or not gentle horses?

Ans. I do not know, sir; except the fact of knowing that they took fright at the engine. I have been frequently told by my friends from the country that they would come to see me, but were afraid to bring their horses on Broad st. for fear of the engines.

4. X Q. Were the horses that ran away with the carriage that you have just spoken of, city horses or horses from the country?

Ans. Horses from the country.

182 5. X Q. What proportion of your business do you think you have lost by reason of the apprehension of your country friends that their horses might be frightened on Broad st.?

Ans. I cannot say, but am satisfied there would have been a decided improvement of trade on the street if the engines had been removed.

6. X Q. How many country customers have you who do their shopping in carriages?

Ans. I have never kept an accurate account, but the injury to business is not confined to carriages from the country; we have also those who reside in the city and come in carriages, and there is frequently objection made to their carriages coming on the street from the fear of the horses taking fright at the engines.

7. X Q. Can you name a dozen of your customers from the country who do their shopping in carriages at present?

Ans. Well, I cannot.

8. X Q. Can you name a half a dozen?

Ans. No; I wouldn't undertake to name any who regularly do their shopping in carriages.

9. X Q. Can you name a dozen of your customers in the city who regularly do their shopping in carriages?

Ans. I would not undertake to name parties who regularly use their carriages on such occasions; but it is a known fact in trade that a large number of persons, both in city and country, come to the stores in their carriages.

10. X Q. Can you name a half a dozen of your customers in the city who have been prevented from dealing at your house because they were afraid to take their carriages on Broad st.?

Ans. I cannot; but, as before stated, expressions of opinion by parties trading have led me to believe that our business has suffered from the general fear of passage of trains on Broad st.

11. X Q. Can you name a single one of your customers in the city of Richmond who has stopped dealing at your house because afraid to take their carriages on Broad st.?

Ans. No.

12. X Q. Can you name a single one of your country customers who has stopped dealing at your house for fear of the engines frightening their horses?

Ans. No, sir.

13. X Q. If, then, you cannot name a single customer, either in town or city, who has stopped dealing at your house in consequence of the apprehension that the engines would frighten their horses, by what process of reasoning is it that you have arrived at the positive conclusion that the business of Broad st. is injured by reason of the apprehension that persons feel that their horses may be frightened by the engines?

Ans. Customers sometimes come in carriages, sometimes on foot. We learn from them when they come on foot that on some pre-
183 vious occasion, when using their carriages, they were afraid to come on Broad st. in their carriages, and made their bills elsewhere, but would have preferred to have made them with us, thus not resulting in entire loss of trade from such parties.

14. X Q. Can you name a single instance, such as you have described in your last answer?

Ans. I can: W. T. S. Fauntleroy, of King & Queen, and M'r's Bradley T. Johnson, of Richmond, with many other expressions from other persons, without particularizing.

15. X Q. Do you know what sort of horses M'r's Johnson drives; whether they are gentle or not?

Ans. I do not know whether they are gentle; they are a pair of very fine horses.

16. X Q. Can you state what proportion of y'r business is done by persons who use carriages?

Ans. I cannot.

17. X Q. Is a large portion of y'r business done by persons in carriages?

Ans. Many of our largest buyers of goods come in their carriages, and I believe such visits would be more frequent were it not for the passage of engines on Broad st.

18. X Q. Has or has not the business on Broad st. increased since 1836, when you went there to live?

Ans. Very decidedly, the engines and trains passing, notwithstanding; and viewing the interest of the street in all its aspects in a business point of view and as a public thoroughfare, I believe that if we could get the engines removed from the street, the general business of the same would be greatly increased in a very few years, and I think that the value of real estate on the street would be very much enhanced: and, acting upon the belief, as well as the hopes that we shall soon be rid of this nuisance on Broad st., we are now making arrangements to increase our facilities to meet such increased demands.

19. X Q. What sort of arrangements are you making?

Ans. We are having a new place of business erected.

20. X Q. Has not real estate advanced very much in value on Broad st. since 1836?

Ans. Yes, sir.

21. X Q. Do you own any real estate on Broad st.?

Ans. I do not.

22. X Q. If the use of the engines on Broad st. is so injurious to the business of Broad st., why did you remain on that street from 1836 down to the present time?

Ans. Because I thought it was my interest to do so.

23. X Q. How could you think it your interest to remain upon a street where the business was so much interrupted and injured by the use of engines on the R. R.?

Ans. My minority as a business man has been on Broad st., and
184 my former partners in business commenced before there was any R. R. on Broad st., and, after years of close attention to business, succeeded in building up a business on said st.; becoming associated with them in the business, by attention to the same, we have so far succeeded so as to make it, in my opinion, to my interest to remain on the street; but, after years of observation, I am equally satisfied it would be to my pecuniary interest if the said R. R. were removed from Broad st.

24. X Q. Did not M'r Mann S. Valentine do a large business at the corner of 4th and Broad st's, and were you not at one time one of his partners?

Ans. It was considered a large business for Richmond, and I was one of his partners.

25. X Q. After M'r Valentine removed from the corner of Broad and 4th st's to the corner of 9th and Broad, was his business as large or as profitable as it was when he did business at the corner of 4th and Broad?

Ans. I know nothing of his business after removing from the corner of 4th and Broad.

26. X Q. Is not Broad st. daily frequented by a large num'ber of vehicles of all sorts drawn by horses?

Ans. Yes, sir.

27. X Q. Are you not a member of the Broad St. Association, and deeply interested in the result of this suit?

Answer. I am not a member of the Broad St. Association, but feel a decided interest in the result of this suit.

28. X Q. Are you not now a partner in business with E. V. Breeden, who has testified in this cause?

Ans. I am a partner of E. V. Breeden.

Re-direct examination:

5. Q. The counsel for the defendant, in one or more of his questions to you, has asked if you know a single regular customer who goes to

your store in his or her carriage to deal, who has ceased to do so because of the engines. If by the term regular is meant always, or even habitual, then please tell me if you ever knew any but an invalid, who was too feeble to go otherwise, who went shopping always, or even habitually, in a carriage, and did not sometimes go without a carriage?

Ans. I never did.

6. Q. Do you believe that any such invalid, if in his or her senses, would go shopping on Broad st. in a carriage?

Ans. I think it would be attended with danger to said party unless the horses drawing said carriage and person were accustomed to the passing of engines and trains.

185 Recross-examination:

29. X Q. Do not invalids come to your store in carriages to deal?

Ans. They do.

And further this deponent saith not.

A. P. FOX.

Deposition of M. L. James, taken April 18th, 1874. (No. 10.)

1st. Question. Where do you reside, and where is your business?

Ans. I reside at 312 Grace st.; I practice medicine.

2. Q. Are you familiar with Broad st.?

Ans. I am, sir.

3. Q. Is or is not the use of locomotives upon the R. R. in that street detrimental to the trade and property *to* that street?

Ans. I think so, sir; greatly.

4. Q. Do you know of any accidents which have occurred on that st occasioned by the use of locomotives?

Ans. I have had my own horses invariably scared there; I have never driven a horse but what has been sometimes seriously frightened there; one of the gentlest which I have ever driven, and one of the gentlest which I ever saw, ran up uncontrollably on one of the sidewalks near 6th and Broad, breaking my buggy; I have several times been called upon to see person' who have been run over and seriously hurt by the cars, not in my regular practice, but by people who send for the first d'r they could get; I say several, but I don't remember how many, not having them under my regular charge, but say two or three or four. I may say, in further answer to your question, that these cars have several times come near running over me; I can explain how: I am driving rapidly, and the cars don't ring until they get to the cross street, and I have known them to run entirely across the street before they ring, and then the side of my buggy projecting on the side that I am sitting prevents my seeing the cars at all; and at other times considerable noise on the streets prevents my hearing the bells, and I have unavoidably come up within almost immediate contact with the engines. My buggy has been broken slightly more than once on account of the horses getting frightened by running up against obstacles, or being suddenly forced to turn around.

5. Q. Do you not consider Broad st. a dangerous thoroughfare for persons in carriages while steam-engines are used on the R. R.?

Ans. I do, sir, and make it a point to avoid the st. if possible: I have several times wished to make purchases on Broad st., which I would have preferred to make there, but on account of the cars I did not go

there, but went to other streets: this was also true when I lived in the country.

186 6. Q. Do you know of any other persons in the country who are also afraid to drive and deal on Broad st. because of the engines?

Ans. I have very often heard the apprehension and know the fact; I should have to stop and think to give names; I know the fact that persons have been deterred from going on Broad street on account of the engines. I may add this fact, that in coming into town in company with other persons sometimes, whose names I can't give now without going back to recall things of several years past, we have agreed that it was unsafe to come down Broad st., and we would take some other street. I may state that many years ago, on one of my earliest visits to Richmond by private conveyance, I came down Broad st. and my horse became furious at the sight of the engines and very much endangered my life; it made an impression on me which I have never forgotten.

Cross-examination by Mr. Steger:

1. X Q. How long have you lived in Richmond?

Ans. Seven years.

2. X Q. Where did you reside before you came to Richmond to live?

Ans. Goochland Co., on James River, ten miles above the city.

2. X Q. Are you familiar with the value of property on Broad st.?

Ans. Not as familiar as a real estate agent, of course, but I know something of the value of property on Broad st.

4. X Q. Do you own any property on Broad st.?

Ans. I do not.

5. X Q. Are you familiar with the extent of business done on Broad st.?

Ans. I am more familiar with the business done on Broad st. than on any other street of the city; I am not familiar with the figures of the business done in any portion of the city.

6. X Q. Do you and your family deal on Broad st.?

Ans. Yes, sir.

7. X Q. Has the property on Broad st. diminished in value since you came to Richmond to live?

Ans. I don't think it has.

8. X Q. Has the business on Broad st. diminished since you came to Richmond to live?

Ans. I don't think it has, sir; but neither the property nor business has increased in a proportional ratio with other portions of the city, in my belief.

9. X Q. Have not both the property and the business of Broad st. increased very much since you came to Richmond to live?

Ans. I think it has increased, but not very much.

10. X Q. In 1867, when you came here to live, were all the business houses on Broad st. occupied?

187 Ans. I am not prepared to answer that question, my attention never having been directed to the matter.

11. X Q. Is there any business-house now on Broad st. between 1st and 8th st's?

Ans. My attention has not been directed to that matter, and I can't say; I know less about Broad st. than any other, because I avoid it on account of the engines.

12. X Q. How do you, then, arrive at your conclusion, very positively

stated, that the use of locomotives on Broad st. is greatly detrimental to the trade and business on that street?

Ans. Well, as to property, now; on the parallel streets in the neighborhood of Broad st. the property has very greatly incresed in value—to an incomparable degree greater on some of those st's to what it is on Broad st.; I believe that business is injured, because I avoid it myself with vehicles on account of its danger, and I know the fact that some other persons avoid it for the same reason; I know that I avoid sending my servants and children there sometimes to purchase things, and I know that other persons avoid it for that reason, too, because I frequently hear Broad-street merchants complain of its injury to business, with one exception, and he was a wood dealer, and thought he was personally benefitted by having the cars run and switched off on his lot loaded; his individuality impressed itself upon me because his was an exception to the invariable opinion of other merchants. I think I have heard some of the merchants (upon reflection) at the terminus between 8th and 9th st's say they were benefitted by the R. R.; I will say positively that they said they were benefitted.

13. X Q. How did you happen to ascertain the opinions of the merchants referred to upon this question; were you personally interested in the question?

Ans. I obtained the information only incidentally, when business happened to take me upon the st.; I feel the interest of a citizen identified with the prosperity of Richmond, and an interest awakened by the inconvenience which it has occasioned me in the discharge of my business, and serious personal risk; it is very commonly the case with me, when I have business on Broad st. requiring my buggy to stop there, I am frequently compelled for its safety to send it off the street, and thus in the aggregate subjected to a considerable loss of time.

14. X Q. What proportion of the business done on Broad st. is done by persons in carriages?

Ans. A very large proportion; great many carriages with persons from the country and city frequent Broad st. to engage in the retail trade; a great many carts and waggons with marketing I observe to change to Brooke avenue, while the usually avoid the neighboring store on Broad st., and I believe they do it to avoid the engines at times frequently traversing Broad st.

188 15. X Q. Then I understand you to say that, notwithstanding the danger arising from the use of engines upon the road, a large portion of the business of Broad st. is still done by persons who use their carriages on that st.?

Ans. A considerable number, but a much fewer number, I think, than otherwise would.

16. X Q. Is it not a fact that most of the persons from the country who come to Richmond to trade come in public conveyences, and those who come in private conveyances generally put up their horses and conveyances at a livery stable and do their shopping on foot?

Ans. I am not posted as to the comparative number of persons who come to Richmond by public and private conveyances; I know the fact that quite a large number of persons, however, come in private conveyances, and bring their marketing and sometimes other produce in waggons and carts; that the disposition of the marketing and produce necessarily require their going about to dispose of their articles, whereas the case of persons who do their shopping, they sometimes do it in their carriages and sometimes put up their horses at stables and do it on foot.

17th. X Q. Is not Broad st. very much frequented by vehicles of various sorts drawn by horses?

Ans. It is.

18. X Q. You have stated that you have several times been called upon to visit persons who had been run over and injured by the cars; were you present and did you witness the accident yourself?

Ans. I did not witness the injury committed by the cars themselves, but have not a shadow of doubt by the concurrent testimony of circumstances that the injuries were so occasioned.

19. X Q. You do not know, then, the circumstances under which the accidents occurred, and do not know that they were not occasioned by the gross fault of the *the* parties themselves?

Ans. I don't know.

20. X Q. Have your horses never been frightened, and have you never had accidents occasioned by fright on any other street than Broad st.?

Ans. They have frequently been frightened on other streets, but candor compels me to say that in proportion to the frequency with which I travel Broad st., much more frequently on that than on other streets; I have had accidents on other streets.

21. X Q. You have said that the property on the parallel streets in the neighborhood of Broad st. has very greatly increased in value and to an incomparable degree on some of them than on Broad st.; can you say that the property on those parallel streets referred to has, since 1836, when the R. R. first commenced operation on Broad st., increased in a greater ratio than the property on Broad st.?

Ans. I have no knowledge of the increase of the value of the property on the streets referred to previous to 1867; since that time the relative increase has been greatly disproportionate.

189 22. X Q. Were there not peculiar causes operating to produce that effect independently of the existence of the R. R. on Broad st.?

Ans. I know of none other.

23. X Q. What streets did you allude to, on which you said property had increased to an incomparable degree greater than on Broad st.?

Ans. Grace, Franklin, Main, and Cary, specially the upper portions of them.

24. X Q. Do you not know the fact that the portions of the streets referred to by you have, in the last seven years and before that time, been greatly sought after for the purpose of private residences, because of the el*l*igibility of the lots themselves and the attractive society in that section?

Ans. Yes, they have been sought after for those purposes. I believe that Broad st. has been avoided for private residences because of the presence of the engines.

25. X Q. Hasn't there within the last seven years been quite a speculation going on in the west end of Grace, Franklin, Main, and Cary st's?

Ans. There has. If I were to state my opinion, I believe that Broad st. has been avoided in these speculations because there was no chance there to make profits; it is so in my own case; I have bought property on the other streets mentioned.

26. X Q. Are there not a great many private families living on Broad st.?

Ans. There are.

And further this deponent saith not.

M. L. JAMES.

Deposition of W'm B. Isaacs, taken 18th Ap'l, 1874, (No. 10.)

1st. Q. Are you a resident of Richmond; how long have you been such, and what is your occupation?

Ans. I am, and have been for the past thirty five years, and by occupation a banker.

2. Q. Are you familiar with Broad street?

Ans. I am.

3. Q. Is or is not the use of steam-engines on Broad street injurious to the trade of Broad street, and render it unsafe to persons travelling in carriages or waggons?

Ans. I should think the use of steam-engines on Broad street injurious to the trade of the street and unsafe for persons in carriages; whenever I am in a carriage, which is seldom, I always instruct the driver to avoid that street.

4. Q. Is not the property north of Broad street—say on Marshall st.—injured in value by the use of locomotives on Broad st.?

Ans. It is my impression property north of Broad street would appreciate in value were the railroad removed from that street.

5. Q. Have you not been for many years a member of the city council?

Ans. I was a member about 18 months, I think, sir.

190 6. Q. Did you or not take an active part as a member to cause the removal of steam-engines from Broad st.?

Ans. I prepared the ordinance which was intended to exclude the locomotives from Broad st. after the first of Jan'y, 1874, which was passed by the council.

Cross-examination by M'r Steger:

1st. X Q. By M'r Steger. What part of the city do you reside in?

Ans. No. 515 n. 6th st.

2. X Q. Do you own your residence?

Ans. I do.

3. X Q. Is it north of Broad st.?

Ans. It is.

4. X Q. How long have you been familiar with the property and trade on Broad st.?

Ans. I have lived north of Broad st. since 1861, and have, of course, in going to my business, had either to cross or follow the street some three or four times a day; I do not know that I am particularly familiar with the trade of Broad or any other street.

5. X Q. During your residence north of Broad st., for the last 13 years, has any marked instance of the diminution of the trade on that st., or of a diminution of property on that street, come within your personal knowledge?

Ans. No; I don't think that the trade of Broad st. and the property have appreciated during that period in proportion to the other parts of the city.

6. X Q. Upon what did you base this opinion, that neither the trade nor the property has increased in proportion in the last 13 years with other parts of the city?

Ans. The general appearance of the trade of the street in comparison with that of other sections.

Redirect e.:

7. Q. It has been said that there are many persons residing on Broad

st. Are they not principally persons doing business on the st., and residing over their stores, or persons renting rooms?

Ans. I believe they are, except those below 9th st.

And further this deponent saith not.

WM B. ISAACS.

Deposition of J. L. Apperson, taken 18th Ap'l, 1874, (No. 10.)

1st. Q. Where yo you reside and what is your business?

191 Ans. City of Richmond; real-estate agent and auctioneer; I have lived here about 50 years.

2. Q. Are you familiar with Broad st.?

Ans. I am.

3. Q. Is or is not the use of locomotive-engines upon the R., F. and P. R. R. injurious to the trade and property of that st., and do they or not make it an unsafe thoroughfare or highway for persons travelling in vehicles of any kind drawn by horses?

Ans. In my opinion it is.

Cross-examination by M'r Steger:

1. X Q. By M'r Steger. How long have you been familiar with Broad st.?

Ans. Since 1853.

2. X Q. Has not the value of property on Broad st. greatly increased since 1836, when the road first commenced running on it with its engines?

Ans. I knew nothing of the value of real estate in the city of Richmond until about 1853—that is, not sufficient to express an opinion; since that time up to the present real estate has advanced in prices throughout the city, but I am not aware of its advance on Broad st. being greater or as great as on other streets; property on Broad st. partook of the general advance.

3. X Q. Do you know the ratio of the advance of property on Broad st. and the other streets of Richmond since 1853? If so, state it.

Ans. I cannot state the ratio of increase, with anything like precision, on Broad or any other st.

4. X Q. How do you know, then, that the property on the other streets of Richmond have increased in a greater ratio than on Broad st.?

Ans. A large portion of Broad st. is occupied by business houses, the value of which there is no other street in Richmond with which to compare it; if compared to the business portion of Main st., that of Main has more largely increased than Broad; a more just comparison, in my opinion, would be obtained by reference to values of real estate on the streets parallel to and each side of Broad st.

5. X Q. If you do not know the ratio of increase of the value of property on Main st., how can you say that it has increased in greater proportion than on Broad?

Ans. As I said before, I have no recollection of ratios of increase anywhere in the city, and can only compare values of similar localities and uses, the revenue derived and sales.

6. X Q. Has not the property on Broad st., between 8th and 1st, increased since 1853 in value in greater proportion than the property on Main st. for the same distance, commencing at 17th st. and running down towards Rocketts?

192 Ans. I know of no special test of values in those localities, and therefore cannot give a very decided opinion, but I in-

cline to the belief that real estate on Broad st. has increased in value to a greater extent than in *the* part of Main st.; it is proper to state that the property in the lower part of the city *of the city* has been materially and injuriously effected by loss of shipping, and especially by the tendency of the city to extend westward, and I therefore do not consider a comparison of the two localities a fair one.

7. X Q. Is there any R. R. on which steam-engines are used on Main st. east of 17th st.?

Ans. There is no R. R. on Main st. east of 17th st. using steam.

8. X Q. Is it an unusual thing in the history of cities for certain parts, which at one time were popular and the value of property high, to become less popular and the property to decline in value?

Ans. It is not.

9. X Q. Is it not a fact, for many years past, that the city of Richmond has been growing westwardly, up the river, much more rapidly than it has ever been down the river, or latterally to the north?

Ans. It is a fact that the city has been growing more rapidly westward than eastward; its growth northward has, in my opinion, been materially retarded by the R. R. being on Broad st., for in my business I find it difficult to sell property north of Broad st., so many persons obecting to cross Broad st.; and I have been told by some that they considered the R. R. in the light of an impassible gulf.

10. X Q. Did you believe them when they told you so?

Ans. I had no reason to doubt that they were expressing their true sentiments.

11. X Q. Were the persons who told you so intelligent, reliable residents of the city of Richmond?

Ans. I so considered them, and have no reason to believe that their opinions were influenced by hostility to the R. R. or other considerations than the bare fact of the road being there.

12. X Q. Did you not know at the time they told you so, and must they not have known at the time they said so, that the R. R. was daily crossed by thousands of persons, and by great numbers of vehicles drawn by horses?

Ans. They doubtless did know, and I do know, that the R. R. is so crossed.

13. X Q. Has not the property north of Broad st., and between 8th and 1st, greatly increased in value since 1853, and has not the population also greatly increased since that time?

Ans. The value of property in the locality indicated has increased in value, and the population has also increased.

14. X Q. Has not the population of Broad st. greatly increased since that time?

Ans. I do not think there has been a great increase in
193 population since 1853; there have been very few houses built since then on that street comparatively.

15. X Q. Is not Broad st., between 8th and 1st, densely built up, and is not every house occupied?

Ans. It is closely built up, and I know of no vacancy.

16. X Q. When a business stand on that part of Broad st. becomes vacant, is it not readily rented out?

Ans. It is.

17. X Q. Are not business stands on Broad street in demand?

Ans. Not specially, that I am aware of.

18. X Q. How, then, does it happen that the whole st., between 1st

and 8th, is closely built up, every house occupied, and when one becomes vacant it is readily taken?

Ans. The main reason, I suppose, is that the rents on Broad st. are lower than on the upper business portions of Main st.

19. X Q. If that accounts for it, why was the business stands not located in the upper end on Main st., or Grace, or Franklin, instead of Broad, if the business was attracted there simply by the lowness of rents?

Ans. Until of late years the population of Richmond did not extend westwardly south of Broad st., west of 1st street, and hence no necessity for stores in the upper part of Main st.

20. X Q. If the population of Richmond did not extend westwardly south of Broad st., and the population north of Broad st. was comparatively sparse, what inducement was there for so many business houses between 8th and 1st, on Broad?

Ans. Counting the negroes, the population north of Broad st. is not sparse, and stores on Broad st., within the limits named, were very convenient to the population on both sides of the street, and great convenience to the population buying at the only market on Shockoe Hill.

21. X Q. Was not the population north of Broad st. sparse in 1853?

Ans. I did not consider the population north of Broad st. sparse in 1853, compared with the same extent of territory south.

22. X Q. Were the streets running parallel with Broad st. and north of it, between First and Eighth st's, closely built up in 1853?

Ans. To the best of my recollection many houses have been built in those streets since 1853.

23. X Q. Do you know of any street in the city of Richmond on which you can pick out eight consecutive squares on which every lot is built up with a business house, and every house is occupied by a man of business, and where, if a house becomes vacant, it can be readily rented out? If you can, please name it.

Ans. Eight consecutive squares in Main st., as well as those on Broad st., can be named; on Main, from 17th st. westward to 9th st.

24. X Q. Do you mean to say that every lot on Main street, from 17th street to 9th street, on both sides, is built up, and that every
194 store in that space is occupied, and that stores are as readily rented on Main as on Broad st. when vacant?

Ans. My impression is that there is a vacant lot on Main st., and also one, if not two, on Broad st.; I do not remember the number of vacant stores on either Broad or Main; my impression is, however, that there is very little difference between the streets; as I said before, business houses on Broad st. are very readily rented in consequence of the difference in price, and probably other considerations; there is no difficulty about renting stores on either street between these points.

25. X Q. Is not Main st., from 17th to 9th, the principal business part for the city of Richmond?

Ans. It is so considered, especially for retail.

26. X Q. Does not the ground between these points sell for more per front foot, and the stores rent much higher than any other parts of Richmond?

Ans. Yes.

27. X Q. Has not the trade on Broad st. greatly increased since 1853?

Ans. I think it has.

28. X Q. Is not Broad st. daily frequented by vehicles of various sorts drawn by horses?

Ans. I believe it is; I go on it myself only when I can't help it in vehicles.

29. X Q. When you say that it is your opinion that the use of engines on Broad st. is injurious to the trade and the value of property on that st., do you mean that it has heretofore or will be in the future?

Ans. I mean to say that in my opinion, from its width and real magnificence as an avenue, that notwithstanding the R. R. being on it it has enhanced in value, but if removed (the R. R.) that the business and value of the property would be greatly increased beyond the present.

Redirect examination:

4. Q. Are not rents much lower on Broad st. than any other important st. in Richmond?

Ans. They are.

Recross-examination:

30. X Q. What do you call important streets in Richmond?

Ans. I call Main st. an important st., as compared with Broad, the same kind of business being done on each.

31. X Q. Are the rents on Broad st., between 8th and 1st, lower than they are on Main st., between 18th and the lower end of Rocketts?

Ans. I know but little about the rents in the lower part of the city, but my impression is, from the character of business and tenants in that locality, that the rents on Broad st., between 8th and 1st, are better.

195 And further this deponent saith not.

J. L. APPERSON.

The further taking of these depositions is continued until Monday' April 20th, 1874.

JO. LANE STERN, *N. P.*

MONDAY, *April 20th*, 1874.

JAMES L. APPERSON recalled.

32. X Q. Taking into consideration the value of the land, and also the value of the improvements on Broad st., and in like manner the value of the land and the value of the improvements on Main st., are not the rents on Broad st. as high in proportion as they are upon any part of Main st.?

Ans. I do not know but that they are.

Redirect examination:

5. Q. Please to state how prices of real estate on Broad st. compare with those of Grace and Franklin on the south and Marshall st. on the north, say between 1st and 8th st's on each st.

Ans. Within the district indicated the prices on Franklin st. are but little less than those on Broad; those on Grace are but little lower than those on Franklin; those on Marshall street are very much lower than on either of the other three streets named. Actual sales within a short time show $67.50 and $40 per foot on Marshall, $90 and $140 on Grace, and about $100 and $150 on Franklin. I don't remember any actual sales of vacant ground on Broad st. for a long time.

6. Q. How, in your opinion, do the actual values of the ground spoken of compare with each other, in your opinion, supposing the R. R. to be out of Broad st.?

Ans. There should not, in my opinion, be much difference in the prices

on Marshall, Grace, and Franklin; and those on Broad would be very much higher than it now sells for there or either of the others.

Re-cross examination:

33. X Q. How does the property on Broad st., between 7th and 8th, compare in value with the property on Grace and Franklin st's, between 7th and 8th?

Ans. It is very much higher on Broad st. because of its proximity to the market, and it is effected by its proximity to the business portion of Main st. and convenience to shoppers on both sides of Broad st. within and beyond these limits.

33. X Q. Are not the lots on Grace and Franklin, between 7th
196 and 8th, nearer down-town and to the business centre than the lots on Broad st., between 7th and 8th?

Ans. Yes. The value on Broad st. *are* in consequence of its stores and business, and there are none on Grace and Franklin.

34. X Q. How does it happen that there are none on Grace and Franklin, when they are nearer the business centre and more accessible?

Ans. Because it has been built up considerably for a number of years for residences, and its proximity to Main and Broad st's; besides, I presume an indisposition on the part of property-holders to have stores in the midst of their dwellings. As business pushes westward on Main st., many persons are of the opinion that stores may be located on Grace and Franklin.

35. X Q. How does the property on Broad st., between 6 and 7th, compare with the property between those streets on Grace and Franklin?

Ans. It is higher on Broad st. for pretty much the same reasons as that given between 7th and 8th.

36. X Q. How between 5th and 6th and the corresponding property on Grace and Franklin?

Ans. The same as above.

37. X Q. How between 4th and 5th?

Ans. The same answer; the difference in value, however, not being so great as in the other cases.

38. X Q. How do the prices of property on Grace and Franklin, between 6th and 8, correspond with the prices of property on the same streets between 2nd and Madison?

Ans. There is not much difference in value between the two sections named, caused in the main, if not entirely, by the disposition to extend the city westward.

39. X Q. Do you know what the vacant lot on the corner of 8th and Franklin st's sold for?

Ans. I do not remember exactly what it did sell for; it is a shallow lot; my impression is that it sold for $100 per foot.

40. X Q. Do you know what the lot on the corner of 2nd and Franklin st's sold for per front foot—the old Ellis lot?

Ans. I do not remember exactly what that lot sold for, but I recollect hearing, as I expected to hear—it having been considered one of if not the handsomest lots of the city—that it sold for a high price.

41. X Q. Is it not a fact well known to you that the western ends of Franklin and Grace st's command an extraordinary high price, and are much sought after by our we'thiest citizens?

Ans. Yes.

42. X Q. How do you account for the fact that, for the last 38 years, the business on Broad st. has increased and the property enhanced many

fold in value, if the use of engines on the R. R. has been so injurious to the trade and to the value of property on that street?

Ans. As I said in a former answer, the increase of population,
197 the great convenience to all persons living on Shockoe Hill who frequent the only market-house on 6th street.

43. X Q. Has the increase of population, north of Broad st. and west of 8th, been greater within the last 30 years than any other portion of the city?

Ans. I am not prepared to say positively that it has, but there being a large negro population in that district of late years, it may be that it has; this negro population has gone there since the war.

44. X Q. If the population north of Broad st., and within the limits mentioned, has not increased within the last 20 years more than other portions of the city, why should the business have continued on Broad st. in spite of the injury done by the R. R., instead of being removed to more favorable streets?

Ans. The trade on Broad st. is by no means dependent upon the population north of it, but I presume the amount of values in traffic is as great, or greater, from those living on the south side, because of the wealth of the population on that side.

45. X Q. If the business on Broad st. 30 years ago had been removed to the upper end of Main st., corresponding with its location on Broad st., would or would not the business done in that new locality have been greater that what has been done on Broad st.?

Ans. I am not prepared to say that it would, but wherever the only market-house on the hill might have been located it would have created a business in its vicinity; in my opinion the present location of the market is about as convenient as it could have been well placed.

Redirect examination:

7th. Q. Will not the increase of population in the western part of the city, and the increase of the value of lands in that part, necessarily increase the business and the value of lands on Broad st., if the R. R. is removed from it?

Ans. I believe that it will.

And further this deponent saith not.

J. L. APPERSON.

Deposition of P. H. Gibson, taken 20th Ap'l, 1874, (No. 10.)

1st. Question. Please state what you know, if anything, of an accident or accidents on Broad st. occasioned by the cars or engines of the R., F. and P. R. R. Co.?

Ans. I was in a horse-car corner of 2d and Broad st's a year or two ago; the horse was frightened by the train of that R. R. approaching; the horse managed to get across the track of the R., F. and P. R. R., and was run into by the train.

2. Q. Was the horse killed by the collision, and were you ever
198 examined as a witness before the R. R. Co. or its officers touching the occurrence; if you were, state all that you know.

Ans. The train consisted of an engine and a number of freight cars; the engine struck the horse first, and he was then struck by every car in the train; I presume that he was killed or fatally injured; I left without looking into his condition; some time afterwards I gave testimony on the subject to the officers of the R. R. Co., a claim having been made against the company for the value of the horse, or the value to

him; I was asked my opinion by the officers, and stated that I thought the train could have been stopped if the engineer had tried to stop it; that the horse was on the tr: c's long enough before the train reached the point where he was to have enabled them to take up the train; that I saw no effort on the part of those in control of the train to stop it at all.

3. Q. Do you know whether the R. R. Co. paid for the horse, or for the damage done to him?

Ans. No, sir.

And further this deponent saith not.

P. H. GIBSON.

Deposition of James Beale, taken 20th Ap'l, 1874, (No. 10.)

1st. Question. Where do you reside and what is your business?

Ans. No. 110 9th st.; I am a physician.

2. Quest. How long have you been a practicing physician in Richmond?

Ans. Very nearly forty years.

3. Quest. Are you familiar with Broad st.?

Ans. Yes.

4. Quest. Is it not one of the widest and finest st's in the city?

Ans. Yes, sir; it is the widest and finest.

5. Quest. Is it not the street to which the people residing on Shockoe Hill have always looked as destined to be the great retail st. of the town?

Ans. I can't say; I have myself, and I believe that that is the case.

6. Quest. Have you knowledge of accidents on that street to persons, horses, and carriages, occasioned by the steam engines and cars used by the defendants on the R., F. and P. R. R. Co.?

Ans. To persons, yes.

7. Quest. Please state all that you know upon that subject.

Ans. A man named Gardiner, an attaché of the R. R., was the first case; I amputated his leg, but I can't say whether he was injured within the corporate limits or not. The next case was that of Mr. Pulliam—I think his name was Rich'd Pulliam; Mr. Pulliam was killed just where the train comes out of the yard into the street. The third case was a girl, I think, by the name of Kidd; she was run over op-
199 posite Breeden's, corner of 4th and Broad; she was run over by the cars, and her thigh was crushed, and she died shortly afterwards. Augustine's case was the *the* fourth case I know of; he had his arm broken. These are all the cases, I think, of my own knowledge, of injuries to persons.

8th. Quest. Do you know of any cases of horses being frightened by the cars or engines on Broad st.?

Ans. Of my own knowledge I do not.

9. Quest. Do you or not consider Broad st. a dangerous thoroughfare or highway for persons on horseback or in carriages drawn by horses while the R. R. company uses steam-engines on their road?

Ans. I do.

10. Ques. Has it not been so for many years?

Ans. It has been so ever since the cars have been on the street; perhaps less so now as the horses become used to the cars.

11. Quest. What, in your opinion, is the effect upon the trade and value of property on Broad st., and the value of property north of Broad st., by the use of steam engines on the street?

Ans. I don't know anything about it; I have no means of knowing

except from the information of others; that is out of my line of business.

Cross-examination:

1. X Q. by M'r Steger. How long have you been familiar with Broad st.?

Ans. Ever since the building of the R. R., and before.

2. X Q. When you first knew Broad st. wasn't it sparsely populated, and were there not many vacant lots on it?

Ans. Yes, sir.

3. X Q. Hasn't it greatly increased in population, and been entirely built up since that time?

Ans. Yes.

4. X Q. Do you know the circumstances under which Gardiner's case occurred?

Ans. I do not.

5. X Q. Do you know any of the circumstances under which the accident to M'r Pulliam occurred?

Ans. I think it was about nightfall; he was a little deaf; he was crushed by the cars and died; I was called in, but could do nothing; he was very old.

6. X Q. Were you present when the accident happened?

Ans. I was not.

7. X Q. When did it happen?

Ans. It must have occurred more than thirty years ago.

8. X Q. Were you present when Miss Kidd was killed, and witnessed the accident? If so, state the circumstances.

200 Ans. Yes; I was near the spot, and witnessed the accident; she was *was* crossing the street when she was run over by the cars.

9. X Q. How far was the engine from her when she attempted to cross the street?

Ans. I can't charge my mind.

10. X Q. Were you acquainted with her before she was killed?

Ans. Yes, I knew her very well.

11. X Q. Where was she carried after the accident?

Ans. I think to the hospital of the poorhouse, on Shockoe Hill; she had no other home; she was an inmate of the poorhouse, I think; she had been previously, I know; at that time I think she still was.

12. X Q. At the time of the accident, did she not have on a long-eared sun-bonnet?

Ans. I think she had; if she had on any bonnet it was of that kind.

13. X Q. Were you present when the accident happened to M'r Augustine?

Ans. I was not; I saw him so'n afterwards at the office of D'r Brock; I remember now another case, of a negro boy living near the corner of 4th st. on Broad; I don't know his name; he was not killed; his leg was amputated by D'r Harrison, and he recovered; I didn't witness the accident; I was told it happened on Broad st., in front of his mother's house.

14. X Q. Has not the business of Broad st. greatly increased since you first knew it?

Ans. Yes, sir; it has.

15. X Q. Is not Broad st. daily frequented by a great number of vehicles of various sorts drawn by horses?

Ans. It is; but I do not drive on Broad st. if I can avoid, if I can find

access to the place I wish to get to without driving on Broad st.; I do not go on the street because of the fear of the engines.

And further this deponent saith not.

JAMES BEALE.

Deposition of Wm J. McDowell, taken April 27th, 1874, (No. 10.)

1st. Question *for* the counsel for the defendants. Where do you reside, what is your business, where is it carried on, and how long have you been in said business?

Answer. Number 6 Broad street; my business is that of wood and coal dealer; it is carried on next to the corner of 1st and Broad; I have been in said business for about eight years.

2d. Ques. How long have you been familiar with Broad street
201 in the city of Richmond, and what have been your opportunities for becoming so?

Answer. Ever since I was 16 years old, and I am now 42—about 26 years. I have been off and on Broad street during that time; for the last eight years I have been on Broad street all the time.

3d. Ques. How long have you lived in Richmond?

Answer. I have lived in Richmond twenty-six years, with the exception of four years within a mile of Richmond, and was doing business in Richmond at the same time, and two years within fifteen miles of Richmond, and doing business in Richmond during that time also.

4th. Ques. How does the population of Broad street at this time compare with its population when you first knew it; is it greater or less now than it was then?

Answer. Greater.

5th. Ques. How does the business done on Broad street now compare with that done on the same when you first knew it; is it greater or less now than then?

Answer. I think it is greater.

6th. Ques. How does the present value of real estate on Broad street compare with its value when you first knew it; is it greater or less now than it was then?

Answer. I am unable to say about that. I don't know how it was then. I know of some lots sold two years ago that have been resold since at a good advance.

7th. Ques. State, if you know, what has been the effect of the use of the defendant's railroad on Broad street; has it been injurious or not to the business and property on that street?

Answer. I do not think it has been injurious to business. I do not know about the property; it may have been or it may not.

8th. Ques. State, if you know, whether Broad street has not been for many years, and is not now, very much frequented by vehicles of various sorts drawn by horses, and also by persons walking on the sidewalks.

Answer. Yes, sir.

9th. Ques. Have you had occasion yourself, in your business, to use carts and horses on that street for the last eight years.

Answer. Yes, sir.

10th. Ques. State whether or not it is very dangerous to vehicles drawn by horses on that street, on account of the use of steam-engines on the road of the defendants on Broad street.

Answer. I have never had any accident to happen to my teams during

the last eight years. I think not, for if it had been I think I should have had some accidents in that time.

11th. Ques. Have you, during the time that you have known Broad street, witnessed many accidents occasioned by the use of engines on the road of the defendants?

202 Answer. Not many.

12th. Ques. Can you say whether the accidents which you have witnessed were or were not occasioned by the fault or negligence of the parties themselves?

Answer. Some were; some were not.

13th. Ques. State how many accidents, occasioned by the use of steam-engines on the defendant's road on Broad street, you have ever witnessed.

Answer. I am unable to say.

14th. Ques. From your knowledge of the use and effect of the defendant's road in Broad street, can you say whether it is or is not a benefit to that street?

Answer. I think it is rather a benefit than otherwise to the business of the street.

Cross-examined:

1st. Question by the counsel for the plaintiffs. You have stated in your examination-in-chief that the running of cars drawn by steam-engines was not injurious to the business of Broad street, but that you did not know whether or not it was to the property of Broad street: do I understand you to say that the property on Broad street would not be more valuable to-day if the said road was not operated by steam-engines?

Answer. I am unable to say.

2nd. Ques. If the cars of this railroad were drawn by horses instead of steam-engines would the business of Broad street be affected thereby?

Answer. I think not. I think the business would be as great if the cars came in by horses as it would be if *it* came in by steam.

3rd. Ques. Do you not think that the dry-goods business, especially that done by the country people in vehicles drawn by horses, on that street would be increased by the railroad using this motive-power—that is, horse-power?

Answer. I am unable to say.

4th. Ques. Is not this business—the retail dry-goods business—done in large measure by ladies moving about in vehicles drawn by horses; if so, is there not a natural apprehension in the minds of parties of meeting these steam engines while so engaged?

Answer. I think it is done more by persons on foot than in vehicles. I think there is such apprehension if they drive scarry horses.

5th. Ques. Are you not aware of several cases of deaths caused by the use of steam-engines on Broad street, such as M'r Clemmitt, M'r James Brown, j'r, M'r Richard Pulliam, and other persons not now recollected, besides many other accidents to the limbs of persons, occasioned by horses attached to vehicles running away in consequence of the use of steam-engines on this street?

203 Answer. I know nothing of M'r Brown or M'r Pulliam; I am not aware that the engine was the cause of the death of M'r Clemmitt; I do not know of any death at all; there may have been some others, but I do not recollect any; I have seen buggies smashed and horses running away, but no accident to any person of any consequence; I mean no accident to persons amounting to anything.

6th. Ques. You have been asked whether the population on Broad street has not increased very much within your knowledge; please state whether it has increased as great or greater ratio on other streets in the city—business streets, I mean—during the period testified to, i. e., twenty-six years, comparing Main and Cary with this street during that time?

Answer. I think it has increased as much on other streets as on this.

7th. Ques. If there was a railroad on Main street propelled by steam to the same extent as on Broad street would this increase or depreciate the property and business on that street, in your opinion?

Answer. I am unable to say.

8th. Ques. If there is no injury to the business on Broad street by reason of the existence of this railroad propelled by steam, why, in your opinion, are there no such retail establishments as Levy's, Price's, and others on that street?

Answer. Main street is the business street of Richmond, and that is the reason, I suppose.

9th. Ques. Has not Broad street, by reason of its eligibility, width, grade, &c., great advantages for the retail trade, and has there not been a tendency of the retail trade to go up Broad street within the last twenty-six years, the period testified to?

Answer. Not more so than Main, I reckon.

10th. Ques. Has it the same advantages for the retail trade with Main street in those respects?

Answer. I think not.

11th. Ques. Has not trade, business, and the value of property on Main street greatly increased over that of Broad street within the last twenty-six years, the period of your knowledge of Richmond?

Answer. Not to my knowledge.

12th. Ques. Compare the property on the north side of Broad street, for instance on Marshall and Clay, with that on the south side of Broad street, for instance that on Franklin and Grace, and say whether that on the latter has not greatly increased over that on the former within the last twenty-six years?

Answer. I suppose it has, but I am unable to say whether it has or not.

13th. Ques. Can you not refer to some sales within the last two years on Grace street, and some within the same time on Marshall street, and compare them?

Answer. I cannot.

204 14th. Ques. How do you know that the railroad does not injure the trade of Broad street—I mean the use of locomotive steam-engines on Broad street?

Answer. I did not say that it did not injure it, but that I did not think it did.

15th. Ques. Why do you think that it does not injure the trade of Broad street?

Answer. I see people doing business on Broad street to-day that were there twenty-five years ago; if their business were injured by the cars or steam-engines they certainly could have gone on Main or some other street.

16. Ques. Is that the only reason?

Answer. Yes, that's the only reason. I don't think they would remain there if the railroad injured their business so that they could not make a living on Broad street. I have known merchants to sell out on Broad street and go upon Main, and then come back again to Broad.

17th. Ques. Please to name those merchants.

Answer. Julius Sycles is one, and I think Thalheimer and Son had a store on Main street, and they sold out and only have one on Broad street at this time. I am not sure whether they had the one on Broad at the time they had the one on Main, but I know they sold out on Main and kept the one on Broad.

18th. Ques. Have they not taken the benefit of the bankrupt law?

Answer. I think so.

19th. Ques. I do not know where number 6 on Broad street is; please state whether above or below First, and how far above or how far below?

Answer. It is between 1st and Foushee.

20th. Ques. Don't the trains of the Fredericksburg R. R. Co. deliver the wood which you sell very near to your wood-yard?

Answer. They do not.

21st. Ques. How far from it do they deliver the wood, and when did they cease to deliver it near your yard?

Answer. They deliver it on the connection road, about seven or eight squares from my yard. Council stopped the trains from delivering wood on Broad street 14 Jan'y, 1873, I think.

22d. Ques. Is it or not a source of great profit to you to have your wood delivered where it is now rather than at some more distant point?

Answer. Of course, though it is a great loss to me to have it put off where it is. I mean a great loss compared with where they formerly delivered it.

23d. Ques. Where was it formerly delivered?

Answer. On Broad street opposite my yard.

24th. Ques. Do you know why the council of the city put a stop to the delivery of wood opposite to your yard and other places on Broad street?

205 Answer. The council passed an ordinance that no car should stand and load or unload on Broad street, and the company would not do it; I do not know why the council passed the ordinance; I suppose it was from complaint of citizens.

And further this deponent saith not.

W. J. McDOWELL.

Deposition of J. W. Anderson, taken May 6th, 1874, (No. 10.)

1st. Question by counsel for the defendants. Where do you reside, and what is your occupation?

Answer. I reside in the city of Richmond, and I am engaged in the examination of the titles of real estate.

2d. Question. Have you ever, at the instance of the defendants, made an examination of the assessments of any property on Broad street, west of 8th? If so, state for what year, and what was the result of that examination.

Answer. I have for the years 1840, 1851, 1854, 1859, and 1871. The result of that examination will be found in a paper now handed you, and to be made a part of my deposition, and marked "Broad street, west of 8th," (No. 1,) which is in the words and figures following, to wit:

Assessed value of certain lots on Broad st., west of Eighth.

Names of owners.	No. of lots.	Streets.	1840.	1851.	1854.	1859.	1871.
Beckman, H	648	Broad and 3d	$25	45	65	100	100
Wall, M	723	Broad and 1st	25	28	40	50	50
Brackett, W'm, est	704	Broad and 2d	25	30	47	65	60
Millhiser, M	571	Broad and 5th	40	60	90	190	250
Carpenter, W	591	Broad and 5th	35	55	80	130	175
Ludwig, C. L	743	Broad and 1st	20	25	37	50	60
Hanes, G	705	Broad and 2d	25	30	45	65	70
Harris, M	590	Broad and 5th	3	55	90	160	200
Lyons, James	629	Broad and 4	30	45	65	120	125
Rutherfoord, Tho's		Broad and Adams		16	25	30	35
Downey, Mark	534	Broad and 6th	50	100	125	250	400

3d. Question. Are the entries upon the paper just referred to above exact transcript' from the official records ?

Answer. I have carefully prepared them from the land-books in the office of the auditor of the city of Richmond.

4th. Question. Did you, upon a like request of the defendants, make any examination of property on Broad street, east of 8th ? If so, state what was the result of this examination.

Answer. I did. The result will be found in a paper which I now hand you, marked "Broad street, east of 8th," (No. 2,) and to be made a part of my deposition. The facts contained therein are exact
206 transcripts from the land-books in the office of the auditor of the city of Richmond, which paper is in the words and figures following, to wit :

Assessed value of certain lots on Broad st., east of Eighth.

Names of owners.	No. of lot.	Names of st's.	1840.	1851.	1854.	1859.	1871.
Joseph Allen	462	Broad and 8	$65	$85	$120	$200	$300
Rich'd, Fred. and Pot. R. R.	477	Broad and 8	60	75	100	150	200
M. S. Valentine	434	Broad and 9th	75	90	110	175	175
L. Hoyer	448	Broad and 9th	65	90	120	200	300
Habliston & Bro	784	Broad and 9th	60	85	100	150	175
S. M. G. Rawlings	779	Broad and 9th	50	60	80	100	100
C. Burging	420	Broad and 10th	75	75	100	150	85
R. Copeland, &c	757	Broad and 11	50	60	80	100	100

5th. Question. Have you, upon like request of the defendants, made any examination of the assessments of any property on Main and Franklin, west of 8th ? If so, state what was the result of that examination.

Answer. I have. The result will be found in a paper which I now hand you, marked "Main and Franklin streets, west of 8th," (No. 3,) and to be made a part of my deposition. The facts contained therein are exact transcripts from the land-books in the office of the auditor of the city of Richmond, which paper is in the words and figures following, to wit :

Assessed value of certain lots on Main st., west of Eighth, (per front foot.)

Names of owners.	Streets.	1840.	1851.	1854.	1859.	1871.
Allen, W'm C	Main and 7th	$50	$70	$80	$140	$130
Hobson, J. C	Main and 5th	.....	70	80	110	125
Pulliam, R. M	Main and 4th	25	50	65	100	75
Allen, L. G	Main and 5th	50	70	80	130	120
Robertson, John	Main and 3d	20	35	55	80	55
Anderson, Sam'l	Main and 1st	12	20	55	35	40
Davenport, E. A	Main and Foushee	.....	25	35	65	60

FRANKLIN STREET, WEST OF EIGHTH.

Allen, W'm C	Franklin and 7th	40	65	75	120	100
Do	Franklin and 6th	.....	60	70	100	100
Dunlop, James	Franklin and 5th	.....	70	75	100	100
Brown, James, est	Franklin and 5th	.....	60	75	120	130
Baker, F. M	Franklin and 3d	20	45	60	80	90
Ellis, Mary K	Franklin and 2d	15	40	65	80	90
207 Kent, H. L	Franklin and 1st	.....	33	47	65	90
Johnson, B. T	Franklin and Madison	6	20	35	45	70
Brander, L	Franklin and 1st	15	37	60	70	90
Maury, R. H	Franklin and Jefferson	8	22	37	50	50

6th. Question. Have you, upon like request of the defendants, made an examination of the assessments of any property on Clay and Marshall, east of 8th? If so, state the result of that examination.

Answer. I have; the result will be found in a paper now handed you, marked "Clay and Marshall, east of 8th, (No. 4,") and to be made a part of my deposition; the facts contained therein were taken from the land-books in the office of the auditor of the city of Richmond, which paper is in the words and figures following, to wit:

Assessed value of certain lots on Clay street, east of Eighth.

Names of owners.	No. of lot.	Name of st's.	1840.	1851.	1854.	1859.	1871.
Hagan, H	783	Clay and 9th	$10	20	35	45	60
Ellett, L. S	782	Clay and 9th	25	40	55	75	50
Kersey & Davis	793	Clay and 8th	20	25	30	25	40
Purcell, John	778	Clay and 10	30	40	50	80	70
Davis, C. T	792	Clay and 8	25	40	45	55	60
Dandridge, W. G	788	Clay and 9th	20	20	40	45	60

MARSHALL STREET, EAST OF EIGHTH.

Harvie, A. F	780	Marshall and 9th	30	50	70	95	80
Wise, John S	785	Marshall and 9th	30	50	70	100	85
Deane, S. C	781	Marshall and 9th	30	55	70	95	85
Robinson, W. R	776	Marshall and 10th	30	55	65	95	80
Gray, Wm	775	Marshall and 10th	35	55	70	100	80
Carlton, A	791	Marshall and 8	30	50	65	90	80
Male Orphan Asylum	780	Marshall and 9th	35	55	75	100	85
Macmurdo, G. P	790	Marshall and 8	30	50	70	100	80

7th. Question. Have you, upon a like request of the defendants, made a comparative table of the aggregate assessments of property on Main, Franklin, and Broad streets, from 7th to Adams? If you have, state what was the result of that examination, and what has been the percentage of the increase of the value of property in each of those streets.

Answer. I have. The answer to the above question will be found in a paper now handed you, marked "Comparative table of assessments (No. 5,") taken from the land-books in city auditor's office, except the
208 percentage, which I made myself, which paper is in the words and figures following, to wit:

Comparative table of assessments from Seventh to Adams st's.

Names of streets.	1840.	1851.	1854.	1859.	1871.	p. c.
Main	$105,673	$189,609	$242,076	$375,493	$303,184	187
Franklin	89,469	201,393	269,450	387,427	416,688	365
Broad	120,921	202,558	291,652	491,829	483,294	272

Cross-examined:

1st. Question by counsel for plaintiffs. Are not the lots described in the papers in respect to which you have testified nearly all corner lots?

Answer. Yes, sir.

2d. Question. Why did you select corner lots alone for your illustration?

Answer. Because I could identify them, in making the examination from year to year, without having recourse to the name of the owner, by the number of the lot.

3rd. Question. Could not every numbered lot be identified with equal facility?

Answer. No, sir.

4th. Question. Why?

Answer. Because the lots in the middle of a square change their dimensions, and also their owners from time to time, and I could not identify any particular one without tracing the title from owner to owner, which was not necessary with corner lots.

5th. Question. Do not lots in the city retain their numbers, although they may change their owners?

Answer. They do, but the land-books only indicate the corner lots with certainty; I cannot tell the exact location of any other than the corner lots from the land-books.

6th. Question. Suppose you wished to ascertain the change in the assessment of various vacant lots; how would you go about it?

Answer. I would first learn to whom they belonged at present, and then I would trace the title back for any given length of time; and if I wished to know the assessment for any particular year, I would look on the land-book of that year, in the name of the person to whom it then belonged.

7th. Question. Are you not obliged to do the same thing with reference to corner lots?

Answer. No, sir.

8th. Question. How can you ascertain the assessment of corner
207 or other lots without first ascertaining the owner of said lot from the said book, or the name of the person to whom it is assessed?

Answer. I have already explained that the land-books indicate the corner lots by numbers as well as by the name of the owner; they do not so distinguish the other lots. I mean they give the number of the city lots, but do not indicate the location of any but the corner lots.

9th. Question. Is it not very unusual for any subdivision of lots between the corners to vary much, if at all, in their assessed value? I mean by lots the ground.

Answer. I presume that the value would be the same. I did not examine the assessments of any of the intermediate lots in order to compare them with others.

10th. Question. Why was it material, then, to ascertain anything more about the lots than the names of the persons who occupied them, in order to ascertain what the assessment was?

Answer. That was the reason why I did not select those lots—the difficulty of ascertaining the names of the owners.

11th. Question. Could not the names of owners, or the persons as whose property they were assessed, be ascertained by looking at the land or assessment books for each year with respect which you wished to be informed?

Answer. Yes, with a certain amount of difficulty.

And further this deponent saith not.

J. W. ANDERSON.

Deposition of Ed. H. Chalkley, taken May 6th, 1874, (*No.* 10.)

1st. Question by counsel for defendants. Where do you reside, and what is your occupation?

Answer. 717 Broad street, between 7th and 8th; I am sergeant of police.

2d. Ques. How long have you been familiar with Broad street, and what have been your opportunities for becoming so?

Answer. I have been familiar with Broad street for at least twenty-five years. I think I have been familiar with it for 29 years, having been on the police force for nearly twenty-nine years. My opportunity for becoming familiar with said street is that I have been living at my present residence, immediately opposite R., F. and P. R. R. Co.'s depot, for twenty-two years. I have policed Broad street for fully twenty-five years; indeed, ever since I have been on the police force, more or less.

3d. Ques. State, if you know, what has been the effect of the use by the defendants of their railroad on Broad street upon the business and value of property on that street; has it been injurious or otherwise?

Answer. My opinion is that from 5th street down to 9th the has been beneficial to both occupiers and owners of real estate. I mean by occupiers the persons doing business on Broad street. And if I
210 owned property on that street, which I do not, below 5th, I should like for the railroad to remain where it is and as it is. I don't think the railroad is injurious to any portion of Broad street, but that it is more beneficial to this portion between 5th and 9th.

4th. Question. Has or has not the use of the defendants of steam-engines and cars on their road in Broad street rendered that street very dangerous for persons using it with vehicles drawn by horses?

Answer. I do not believe that any one shuns the street on account of the railroad, because I see as many vehicles and as many persons on that street as upon Main street, where there is no railroad; and that accidents have occurred on Broad street I believe were caused more by carelessness of drivers than by the railroad.

5th. Question. From your opportunities of judging, have or have not the accidents upon Broad street been more numerous than upon any other street of the same length in Richmond?

Answer. I believe they have.

6th. Ques. Do you know of any accidents on that street occasioned by the locomotives or cars of the defendants by which persons have been killed or seriously injured? If so, state whether such accidents have been frequent or not, and whether they have been occasioned directly by the defendants' cars or engines or were caused by the negligence or recklessness of the person' themselves.

Answer. I have never seen such an accident upon the road since I have been familiar with Broad street.

Cross-examined:

1st. Question by counsel for plaintiffs. Are you single or married?

Answer. Single.

2d. Ques. Have you any children living with you?

Answer. No, sir.

3d. Ques. Have you any living in Richmond?

Answer. No, sir; I never raised but one, and she is now living in New York, and has been since previous to the war.

4th. Do you keep house or are you boarding?

Answer. I am boarding.

And further this deponent saith not.

E. H. CHALKLEY.

Deposition of E. T. D. Myers, taken day of , (No. 10.)

1st. Question by counsel for the defendants. Where do you reside and what is your occupation?

Answer. I reside in Richmond, and am a civil engineer by profession, and superintendent of the R., F. and P. R. R. Co.

2d. Ques. State, if you know, how many engines and trains the defendants run upon their railroad in Broad street every day.

Answer. On an average twelve locomotives pass one way; that
211 is to say, six engines up Broad street and six engines down. There is a passenger train up and down on each of six days in the week, and there is a freight train up and another down three times during the week. These trains are drawn by the engines mentioned in the first part of this answer.

3d. Ques. Are there as many trains now upon the road in Broad street *now* as there were formerly?

Answer. No; the mail trains, twice daily, arrive at Byrd street, and twice daily depart therefrom by another route, which leaves Broad street, one mile above the depot, at the corner of 8th and Broad, said route being known as the connection railroad.

Cross examined:

1st. Ques. Is the last point of which you have spoken, one mile from the Broad-street depot, the point of connection between the Broad-street railroad and what is called "the connection railroad?"

Answer. It is.

2d. Ques. Is there an engine now used on Broad street called "The Agent?"

Answer. There is.

3d. Ques. For what purpose is it used?

Answer. To draw the freight trains from and to the point mentioned and the company's freight depot—I mean the point mentioned in my last answer; also to shift passengars and freight-cars from the centre line along Broad street into the adjacent yard of the company at the corner of 8th and Broad; this engine is not included in the twelve locomotives before mentioned.

4th. Ques. You have spoken of a passenger-train which comes in and goes out six days in the week; please state what passenger-train that is.

Answer. The accommodation train for passengers between Richmond and Milford, a point 40 miles from said city.

5th. Ques. Do any through passengers arrive by any of your trains in and depart from Broad street?

Answer. Not at present.

6. Ques. Of what use does the company now make *of* its Broad-street depot, at the corner of 8th and Broad streets?

Answer. It is used for the reception of grain and merchandise and other freights.

7th. Ques. Has the company any workshops now on the lot on which that depot now stands?

Answer. They have.

8th. Ques. Have they one or more?

Answer. One.

9th. Ques. What kind of work is done in that one?

Answer. Repairs of machinery and blacksmiths' work.

10th. Ques. Please state what machinery and blacksmith work it is.

212 Answer. Repairs of the locomotives, of which there are thirteen, and the iron-work of cars of all descriptions belonging to the road, and that incidental to the roadway.

11th. Question. Have not the company workshops above Broad street, on the line of their road to Fredericksburg, outside of the limits of the city of Richmond, but very near to them?

Answer. For cars, yes; for locomotives, no.

12th. Ques. Were not those workshops, or workshops in which the *the* same work was done, located formerly upon the lot on the corner of 8th and Broad?

Answer. For work of the same character, yes; to the same extent, no.

13th. Ques. When and why were they removed?

Answer. On account of the insufficiency capacity of the former location and to give room for an increase of freight business last year.

14th. Ques. Why was not the shop for the repair of engines and for blacksmith work removed at the same time and to the same place?

Answer. Because of the sufficient capacity at the present location for the present demands, as well as the heavy expense incident to such removal.

15th. Ques. How long has that shop for the repair of engines and blacksmith work been located where it now is?

Answer. I do not know.

16th. Ques. How long have you been connected with the R., F. and P. R. R.?

Answer. With some intervals, for nine years.

17th. Ques. Has there never b en more than one such shop at that point since your connection with the road?

Answer. No.

18th. Ques. Is the freight business of the Fredericksburg road on Broad street greater now than it was before the war?

Answer. I was not connected with the road before the war.

19th. Ques. Has it increased since your connection with the road, and *and* is it now increasing?

Answer. It has increased considerably; I think it is now increasing.

The further taking of these depositions is continued, by consent, until to-morrow morning at 10 o'clock, at the same place.

R. H. STEGER, *N. P.*

OFFICE JNO. O. STEGER,
City of Richmond, April 24th, 1874.

Above deposition resumed pursuant agreement.

Present, Hon. James Lyons, counsel for plaintiffs: Jno. O. Steger, counsel for *plaintiffs*.

213 20th. Question by counsel for plaintiffs. Are you not familiar with the character of the mail trains that pass from the north and the south through Baltimore?

Answer. I am.

21st. Quest. Are they not much larger and heavier than any train that now comes down Broad street, or has come since the mail train was taken off?

Answer. Yes.

22d. Quest. Is not the same true of the freight trains?

Answer. There is no freight train that runs through Baltimore in solido, except by steam through the tunnel; freight-cars are transferred from the Phila. road to the B. and O. road, in what number I do not precisely know, by horses; the passenger-cars which compose the through trains running over the Balt. and Ohio and Phila., W. and Balt. R. r'ds, are drawn also, for about one mile through Pratt street, in Baltimore, by horses on the same route; freight-trains and passenger-trains between Washington and New York, via the Baltimore and Potomac and Phila., Wil. and Baltimore roads, pass through the tunnel, drawn by steam.

Q. 23d. Could not the business of the R., F. and P. R. R. on Broad st. be done as well in cars drawn by horses as in Baltimore?

Ans. 23d. At an increased expense, yes.

Re-examination:

1st. Question by counsel for defendant. You said, in answer to the last question, that it would be at an increased cost to the company; would not that increased cost be so great as to induce the company to remove their present accommodation-train to Byrd street instead of bringing it down Broad st. by horses?

Ans. Yes, sir.

Recross examination:

1st. Quest. Would not Byrd-street depot be almost as convenient a starting and terminal point to most of the Broad-street passengers who now use the railroad, and to most of the shippers of freight upon the same, as the 8th-street depot on Broad st.?

Answer. To the passengers in question, no; they have an additional fare to pay for use of connection road; to many of the shippers from Richmond, yes; but they also would have more to pay; of those who

receive freight by the R., F. and P. R. R. many would prefer the Broad-st. terminus and some the Byrd-street terminus.

And further this deponent saith not.

EDW'D T. D. MYERS.

214 It is agreed by counsel that the following questions and answers may be treated as a part of the deposition of the above witness:

Question by counsel for the plaintiffs. Please to state, if you know, whether the connection-road, leading to the Byrd-street depot, was not made mainly at the instance of the stockholders of the R., F. and P. R. R. Co., and whether the R., F. and P. R. R. Co. owns any stock in the connection R. R. Co.; and if any, what proportion of the whole, and why that connection was made?

Answer. The connection-road in question was not made mainly at the instance of the stockholders of the R., F. and P. R. R. Co., but at the instance of then president of the Richmond and Petersburg Railroad Company, Mr. Charles Ellis, seconded by P. V. Daniel, esq., then president of the R., F. and P. R. R. Co.; the R., F. and P. R. R. Co. does not own any stock in the connection railroad company; the connection was made to facilitate the transfer of through freights and passengers between the lines connected by it, theretofore made by wagons and omnibusses through the streets.

(Signed) EDW'D T. D. MYERS.

It is admitted by the parties, by their counsel, that in 1834, when the defendant's charter was granted, the western limits of the city of Richmond on Broad street were a few feet west of Monroe street, and that the limits of the city on that street now extend very much further west.

It is agreed *that* by counsel in this cause that the within question and answer may be taken as a part of the deposition of Major E. T. D. Myers.

A.

Question by counsel for plaintiffs. Please to state what is the first cost of thirteen locomotive steam-engines, and what the cost of running them and keeping them in repair for one year, and how much of this cost ought properly to be charged to the business of the company on Broad street; please to state, also, how many horses it would take to haul passengers and freight from the western limits of the city to the 8th-street depot?

Answer to question A. The cost of 13 locomotives depends upon size, finish, and materials; take ours at $130,000 as an approximation; cost of repairs and running for one year, say $45,000; could not say how much should be charged to the business on Broad street; it would take five horses at least to haul each car in good weather; at certain seasons they could not do it; sometimes we have sixteen cars on our Broad-street trains now—very often twelve; will probably increase this soon; twenty horses would suffice for our accommodation-trains at
215 present; twenty horses could transfer our freight-trains at their present stage, from the western limits of the city to Broad and 8th streets, with from three to five round trips, occupying about one hour each trip; the same service is performed by one locomotive at one trip, and its capacity is not more than half taxed.

EDW'D T. D. MYERS.

It is agreed by counsel in this cause that the within question and answer may be taken as a part of the deposition of Major E. T. D. Myers.

B.

Please state what would be the cost of transporting your freight and passengers from the western terminus of the city of Richmond, by the connection road, to Byrd-street depot, and what the cost of carrying the same by horses from the same point to the 8th-street depot.

Answer to question B. I should say about $14,000 as an answer to the first part of the question, and about $10,000 as an answer to the last part, provided always that there were no great increase of business, and that the lot at Byrd st. were well adapted to the same.

It is agreed by the counsel in this case that the within questions and answers shall be taken as a part of the deposition of Major E. T. D. Myers.

R. H. STEGER.

1. Please to state whether one of the buildings now occupied by the R., F. and P. R. R. Co., fronting on Broad st., is not a small wooden building, while that at the corner of Broad and 8th and the one next to it are not very old buildings, and small, and have been built for many years; say how long.

Answer to 1st question. One of the buildings is a small wooden one, and those at the northeastern corner of Broad and 8th streets are old, and how old I do not know.

2d. Is not the depot lot of the company occupied for the whole width of its rear on Marshall st., from the corner of 8th to Dr. Trent's lot, and on the whole length of eighth st., from Broad to Marshall, by the R. R. Co.?

Answer to 2d question. Yes.

3. Please to state what the depot lot cost the company originally, and what the buildings upon it have cost; I mean the depot at the corner of 8th and Broad st's.

Answer to 3rd question. I do not know; they were built long before my connection with the company.

4. If the engines are removed from Broad st., and the freight
216 and passengers are carried to the Byrd-st. depot, or any other depot which the company may establish, will the R. R. thereby be subjected to any loss; and, if any, what?

Answer to 4th question. I cannot form an opinion without knowing to what point, in what time, and on what terms the transfer would be made; what the facilities, process, and for the transaction of the company's business would be; on what security for the future enjoyment of the new site the title of the company would rest; what the cost of building a track to the new site would be; whether the use of locomotives would be permitted to transport the trains, &c. So far as the removal of the stable and shops for engines from the present site is concerned, however, measures looking to that end have been taken by the company, and they will, I believe, be carried out at some time not far distant, or whenever the company may find it possible to do so without direct loss.

5. Does not the company own a lot large enough for its depot on Byrd st., and if the council of the city of Richmond, or any other party or parties, should pay the R. R. Co. $80,000 for its depot property at the

corner of 8th and Broad, would the company be a loser by its change of depot; and, if so, to what extent in amount?

Answer to 5th question. The company does own a lot at the corner of Byrd and 8th streets; owing to the fact that this lot is intersected by the connection track, built at a higher elevation, and accessible only by spur-tracks radiating from the northern abutment of James River bridge, it is not at present well adapted for the purposes in question, nor is this lot within a mile by the shortest practicable route of the line of this company's road; the connection road does not belong to the R., F. and P. Co., and its use is paid for separately; whether the company would be a loser by the change would depend altogether on the terms upon which it might be made; I am unable to say, without knowing them. At the request of counsel for plaintiffs, I submit a diagram of the lot at Byrd st., which diagram is as follows:

(See manuscript for diagram.)

6. If the property owned by the R., F. and P. R. R. Co. on Broad and Marshall st's were built up on Broad st. with fine stores, and on Marshall with fine dwellings, what would be the effect of such a change and improvement upon those streets in the prosperity of those streets?

Answer to 6th question. In my opinion, the construction of fine stores upon the present depot lot on Broad street, and of handsome dwellings upon Marshall, (were such lot vacant,) would be rather the result of an increased prosperity than the cause of it. As I am compelled by the question to speak conjecturally, I will say that I should invest in fine stores between 7th and 8th on the north of Broad quite as readily
217 as between 8th and 10th, or in fine dwellings on the south side of Marshall between 7th and 8th quite as readily as on north side of the same street between the same points, but not more so.

EDW'D T. D. MYERS.

It was also admitted that the appellant, since Jan'y, 1874, and prior to its prosecution by the city for the violation of said ordinance, did propel its trains by steam-power on the line of its road thro' Broad street east of Belvidere street, and that a small part of the track of said railroad was at the time of the charter of said railroad company outside the corporate limits of said city.

And this being all the evidence in the case, the court sustained the exceptions of the attorney for the city of Richmond to the depositions marked No. 9 and No. 10, upon the ground that they were irrelevant; and for reasons assigned in a written opinion, which, upon the motion of the attorney for the city of Richmond is made a part of the record in this case, affirmed the judgment of the police justice; to which judgment of the court, sustaining the exceptions of the attorney for the city of Richmond to the said depositions, and affirming the judgment of the police justice, the appellants except, and pray that this their bill of exceptions may be signed, sealed, and allowed them, which is accordingly done.

R. R. WELLFORD, J'R. [SEAL.]

Which opinion in writing is in the words and figures following, to wit:

Opinion of the judge.

R., F. AND P. R. R. Co. /
vs.
CITY OF RICHMOND. \

This case is brought before this court upon an appeal from the judgment of the police justice of the city of Richmond, inflicting a fine upon the appellants for a violation of an ordinance of the city forbidding their use of steam as the propelling power of any cars used upon their railway track on Broad street east of Belvidere street.

The appellants complain of the judgment of the police justice because, as they insist, the ordinance is invalid, inasmuch as it imposes upon them a penalty for the exercise of a privilege granted to them under a contract with the State of Virginia, set out in their charter, passed by the gen'l ass. Feb. 25, 1834.

The agreed facts concede that a small portion of the track of the appellants east of Belvidere street was not within the limits of the city at the date of their charter, but concede further that the inhibition of the ordinance was disregarded, and the offence for which they were
218 convicted was committed throughout the whole extent of their track on Broad street. If, therefore, the contract rights asserted by the appellants did not include the user of steam as a propelling power for their cars within the limits of the city at the time of the passage of the act of assembly incorporating the R., F. and P. R. R. Co., the judgment of the police justice cannot be made a matter of exception. It cannot be questioned that the ordinance is valid, so far as it does not violate any contract rights. The general assembly delegated to the council of Richmond full authority in the premises (see char., chap. 3, sec. X.) with the single limitation that no contract should be violated. We have, therefore, to enquire what the rights to be exercised in the city of Richmond were, conferred upon the appellants in their charter.

The charter is very lengthy, comprising thirty-eight sections and covering some nineteen pages in the printed copy in the record, antedating all general laws of the commonwealth respecting such corporations; the privileges of the corporation were confined in perpetuity, and the greater part of the act is addressed to the rights of the corporation for the acquisition of all land needed for its purposes and the manner and form in which it may be condemned, and in designating the officers to manage the interests of the company, and prescribing their duties and powers.

A very few sections have any bearing upon the question before us. The first section speaks of a contemplated terminal point within the city, but in no other section, in any grant of corporate right or imposition of corporate duty, is the city of Richmond mentioned. Rights are granted and duties are imposed, to be enjoyed or performed along or upon or as incidental to the track of the railroad "authorized by the act," or "constructed under its authority," or some equivalent expression. If, therefore, there be no limitation imposed by the first section, all rights granted to the company would seem to be, in the contemplation of the charter, as exclusive within the city as along its whole track. This is equally true as to all the duties imposed upon the company.

We are necessarily remitted, then, to an examination of the 1st section to determine whether any corporate rights were granted or any

corporate duties imposed within the city; and, if so, upon what, if any, limitations.

The first section reads as follows:

FIRST SECTION. Be it enacted by the general assembly, That it shall be lawful to open books in the city of Richmond and town of Fredericksburg, and at such other place or places as a majority of the commissioners hereinafter named shall think fit, under the direction of John H. Eustace, Fleming James, Lewis Webb, John A.
219 Lancaster, James Bosher, Richard C. Wortham, Conway Robinson, Wilson Allen, Fayette Johnson, W. S. Blackford, John L. Marye, John Dickerson and Joseph M. Shepard, or any two of the same, or of any deputies or agents of the said commissioners, for the purpose of receiving subscriptions to the amount of seven hundred thousand dollars, in shares of one hundred dollars each, to constitute a joint capital stock, for the purpose of making a railroad from some point within the corporation of Richmond, to be approved by the common council, to some point within the corporation of Fredericksburg; and for the purpose of extending the same, should the company hereby incorporated at the commencement of the work or at any time afterwards deem it advisable to do so, from its point of termination within the town of Fredericksburg to the Potomac River or some creek thereof, and for providing everything necessary and convenient for the purpose—transportation on the same.

In brief, this is the appointment of some thirteen gentlemen as commissioners, with authority to open books for subscription to the capital stock of a proposed railroad "from some point within the corporation of Richmond, to be approved by the common council, to the town of Fredericksburg."

This was an offer by the State to individuals of inducements to subscribe to the proposed road. As soon as that offer was accepted it became a contract between the State and the subscriber, and the company, when formed, became a third party to the contract, succeeding to the rights of the subscribers against the State; but in succeeding to those rights it contracted with every subscriber as the price of such succession and as the consideration upon which payment of his subscription could be enforced, that it would assume and exercise, with all its attendant burthens, every franchise promised by the State as the consideration of his subscription.

In enquiring, then, into the extent of the rights of the company within the city, we must determine primarily the rights of the subscribers when the company was formed. The charter had offered these rights, coupled with the assumption of corresponding duties, and the subscriber had intelligently accepted the offer; he had the right to claim the privilege *cum onere*, and he transferred that right to the company on their contract to assert it for him. His obligation to pay his subscription was dependent upon the enjoyment by the company of those rights on the conditions he had accepted, and neither the company nor the State, nor both conjoined, could have altered his contract without his consent and enforced the payment of his subscription. If, therefore, the enjoyment by the company of any corporate franchises within the city of Richmond constituted any part of the consideration upon which subscriptions to the stock had been obtained, and the terminal point of the road had been, even by the authority of a subsequent act of the general assembly of Virginia, established one inch
220 beyond the city limits, the subscribers could have successfully

resisted the enforcement by the company of the payment of their subscriptions.

The general assembly had certainly held out an expectancy that the terminal point would be in the city, and a citizen of Richmond interested in property in Rocketts, and believing that the company and the council would concur in the propriety of establishing the point of departure of the road in the immediate vicinity of the wharves, might very well, in expectation of that result, have subscribed to the stock.

Now, suppose that the executive officers of the company, when organized, should have hesitated to establish any terminus point for the road within the city, we may well imagine that learned and intelligent counsel might have advised them that any proposal by them for approval by the council for such a terminal point would have committed the company, upon its acceptance, to an irrevocable contract, and that such a contract would involve obligation through all coming time to pay upon all corporate property city taxation, limited only by the extent of constitutional or legislative grant to the city and the necessities of the city in its indefinite future; that it further involved an assumption by the company, for an equally indefinite future, of duties for the carriage and delivery of freight and passengers within the city, identical in extent and nature with those which the company assumed all along its track in the country; and that for the same indefinite future it entailed upon the company liability for all the hazards to life and property incident to a comparatively untried experiment in the daily and constant use of dangerous machines to an extent, within the streets of a growing city, as limitless as that which they had necessarily to assume along its entire line of track through a comparatively uninhabited country. It would not have been very astonishing if an intelligent board of directors, in view of such advice, should have resolved not to locate any portion of its road within the city, and if the legislative authority had been deemed necessary we can scarcely doubt that the general assembly would have authorized them to establish the terminus of the road just beyond the city limits. If such had been the action of the company, could any citizen of Richmond who had subscribed to the stock, or the city herself, if she had been a subscriber, had made valid complaint and successfully resisted the enforcement of payment of such subscription? I think not; the company might very well have replied to any such complaint—

1st. That, in the strictest literal construction of the charter, no obligation was imposed upon itself or upon the council to establish a point of departure within the city more than one foot from its boundary-line; and

2nd. That whether the terminus of the road should be within the city at all was necessarily contemplated by the charter as a contingency, for it depended upon the concurrence of the company and of the council, in the exercise by each of an intelligent discretion in the discharge of a grave public trust. I do not know any authority which could have controlled them, or either of them, in the exercise of that discretion, except the general assembly of Virginia.

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Suppose that the courts had been appealed to, and a mandamus applied for to compel the board of directors to designate some terminal point in Richmond, would it not have been abundantly sufficient to reply that the letter of the charter could be satisfied by designating a point one foot within the city; that to designate such point would subject the company to burthens and obligations which the directory deemed it unwise to assume, and that any such point would give neither

to the company any greater facilities for the performance of the public duties it had assumed, nor to the public any better opportunity to enjoy the benefits contemplated by the assembly in the charter, than was given by the point the company proposed to use, only a foot or two farther to the northward. Upon such an answer, if a demurrer admitted the facts to be correct, or if upon hearing the court were satisfied that they were, could any court have felt itself justified in holding that the charter commanded the company to enter the city? But the company could have replied further that the general assembly had given, in another portion of the charter itself, a very significant indication of its own intent and its own understanding of the construction which would be placed by the public on its offer in the 1st section.

In the 38th section we have, in the form of a solemn contract, a recital, in preamble, of consideration offered to subscribers, and a subsequent pledge of exclusive enjoyment of a portion of the privileges tendered, for the period of thirty years. In that preamble it is recited that the contemplated railroad will form a part of the northern and southern route between the city of Richmond and the city of Washington; and the pledge is conditional upon the completion of the road from the "city of Richmond"—not from any terminal point in the city—"to the town of Fredericksburg, within the time limited by this act."

The recital in the preamble may have been ambiguous; but when, in the body of the section, the general assembly declared that the completion of a road from Richmond to Frederb'g, within the time limited by the act, would have satisfied the obligation of the subscribers and entitled them to the exclusive enjoyment of the privileges of carriage of passengers to Washington for thirty years, it would seem very clear that no court could entertain the complaint of any subscriber that he had contracted for a terminal point of the road within the city. I am of opinion, therefore, that no corporate franchises, to be exercised within the city, constituted any part of the consideration on which the subscription was obtained. The charter certainly contemplated a proba-
222 ble terminus of the road within the city, but that terminus was dependent upon the conjoint action of two independent bodies—the directory of the company and the council of the city—and its establishment involved very important interests to both the company and the city. It carried with it, not only to the company privileges of vast consequence and the surrender to it by the State and the city of important rights, but it also involved corresponding obligations upon the company to the citizens of Richmond and the traveling public which might be deemed onerous and oppressive.

The determination of that terminus was expressly reserved, as a matter of convention between the company and the State, and it obviously exacted from the representatives of each the exercise of a large and intelligent discretion. Neither party was under any obligation to the other to constrain that discretion.

The State, through her designated representatives, was to receive and consider a proposition which might involve the transfer under contract obligations, never to recall them, of some of her highest powers, of momentous consequence to all the present and the future.

If that representative had been a mere subordinate officer, either of the State or of the city, and his powers had been restricted within the narrow compass of merely affirming or disaffirming assent to any terminus proposed by the company, he could not have been unmindful of the gravity of the responsibility devolved upon him. Whether the theory of construction, asserted in this cause by the appellants, be or

be not correct, he would have been compelled to contemplate it and all legitimate consequences thereof as probably dependent upon his simple assent; his single act might consummate a contract of perpetual duration, in which the State would surrender to the use of the company the streets of her capital city, between the designated terminus of the road and the northern boundary of the city, with the immediate right, under the 7th section of the charter, to occupy them with as many sets of tracks as the officers of the co. might deem necessary, and use the still larger and almost unlimited franchise granted in the same section, to construct at pleasure branches or lateral roads in any direction whatsoever, not exceeding ten miles in length, necessarily including within its extent every street and alley of this city, as it then was or would be if it swelled to the dimensions of the proudest commercial metropolis of the country, with the right to use at pleasure, for the movement of its trains, the propelling power of steam.

Any intelligent representative of the State, called upon to exercise even the most limited discretion in the performance of a mere ministerial act, the consequences of which were to be so limitless in extent and perpetual in duration, might well have hesitated to act and have remitted to the general assembly itself the consummation of such a contract.

223 Suppose that he had done so, can it be doubted that the general assembly might have refused then to approve or authorize the approval of any terminal point of the road in the city, or might have given its approval, with such conditions and limitations as to duration or extent of corporate rights within the city, as to its wisdom might have then seemed just and expedient? But in this charter the general assembly did not confer the duty of representing the State, in this convention with the company, upon a mere subordinate officer. Her designated representative was the common council of the city of Richmond, the local municipal legislature. Nor did it, in my opinion, restrict the discretion and the powers of its representative to a mere affirmance or disaffirmance of assent.

I can see no reason to justify such a narrow construction. The grave consequences of the act, taken in connection with the fact that, up to that time, not one dollar had been contributed or expended by stockholder or company on the faith of any promise by the State constraining her discretion in determining the duration and extent of any corporate franchises within the city, seem to me sufficient to compel the rejection of such a theory of construction. Every intendment of law in the interest of the great public must be against its adoption; besides, if this be the true construction, it would seem to have been a matter of gratuitous folly on the part of the assembly to have required any approval by the council or any other representative of the State, for the very moment the terminal point was established, the company, under the powers conferred in the 7th section, to build lateral roads or branches, with as extensive right to use them as the main line, would have been entitled under the contract immediately, or at any future time, at their own pleasure, to establish a point of departure of the road at any point in the city which it might choose.

But, apart from these considerations, the true intent of the legislature seems to me to have been distinctly expressed in the designation, common council of Richmond, as a body whose approval was essential to the establishment of any terminus for the road within the city. That body, under the theory and practice of our Government, was then, as it is now, the ordinary and natural depository of all legislative power pertaining to the police of the streets of the city. It was subordinate, it is true, to

the general assembly, and its powers were derivative from that body, but the grant of those powers to a municipal legislature is always liberal and to be construed liberally; only in exceptional cases does the assembly undertake to override its authority by any direct legislation in regard to municipal matters; and while the power of the legislature to do so is unquestioned, the municipality is always entitled to the benefit of every presumption that it has no such purpose. This rule of construction is of especial application in the case before us, because the general assembly, in conferring upon the appellants, as it is claimed, the unlimited right to the use of steam as a locomotive power
224 along its entire track, had entirely failed to impose any limitations or restrictions upon its use within the streets of the capital city of the State.

If the general assembly, then, had proposed to reserve as a matter of subsequent legislation the grant of any corporate franchise within the city, we might very naturally have looked for it in the form of a reservation to the common council. Suppose that the charter had provided that the terminal point of the road was to be approved by the general assembly, I presume that there could have been no question, then, that all such franchises were reserved for subsequent legislation, and were to be dependent upon the limitations, restrictions, and conditions of subsequent legislation. I think that the reservation to the common council is of equivalent import, and I must construe the charter as remitting the company, for any corporate rights within the city, to the legislative discretion of the common council; that discretion, when exercised, and privileges conceded under it accepted by the company, to constitute the measure of the rights of the company under the contract with the State contained in its charter.

This construction seems to me to be sustained by the action of both parties to this controversy in the establishment of the depot of the company within the city. The charter imposed upon the company the duty of taking the initiative in the establishment of the terminal point of the road. After the company was organized the directory were to submit, for the approval of the council, some point of departure for their road. In the interest and for the benefit of the company, after full opportunity to weigh and value all consequent burthens, they were to designate the point of departure, and asked the approval of the council of Richmond. They did make such designation, and approached the council with the following proposition, which proposition is in the words and figures following, to wit:

"At a meeting of the president and directors of the Richmond, Fred. and Potomac R. R. Co., on Monday, the 22d of December, 1834; present, John A. Lancaster, president; Conway Robinson, Nicholas Mills, and James Bosher, directors.

"Whereas by the act incorporating this company it is requisite that the point at which the railroad terminates within the corporation of Richmond should be approved by the common council, and it appears to the board most expedient to conduct the same from the Richmond turnpike along H street, to a point at or near the intersection of said street and 8th street, and for the present to terminate the same by suitable connections with the contemplated warehouses and workshops of the company on lots Nos. 477 and 478, purchased by them from John Heath: Therefore be it

"Resolved, That the approbation of the common council be requested to the above plan.

"Resolved, That the president cause a copy of the foregoing resolution to be transmitted to the common council.

225 "Resolved, That the president, if he deem the same advisable, request the engineer to attend a meeting of the hall for the purpose of giving any explanations which may be desired in relation to the plans of the company.

"A true copy from the minutes.

"J. B. WINSTON, *Secretary.*"

The counsel had a right to regard this as an application for privileges. It would have implied a very captious spirit in any councilman to suggest that in this respectful application there was any reservation, by the directory of the company, of right to claim the approval by the council of the temporary terminus mentioned as exhaustive of its powers in the premises, and committing the State, through the council, to an irrevocable contract for the use of steam upon the streets of Richmond to the same extent which the charter conceded in the forests of Henrico, Hanover, Caroline, and Spottsylvania. The directory excluded any such idea, in the very terms of its proposition, by designating a temporary terminus and asking the approval of the council, not only for the terminus but for the proposed plan of approach and access to it. The interpretation which the council placed upon this application of the directory is clearly set out in their action upon the subsequent day, which is in the following words and figures, to wit:

"The occupation and use of Broad street by the Richmond, Fredericksburg and Potomac Railroad Company.

"The council of the city of Richmond, Dec. 23rd, 1851.—The following preamble and resolution were adopted:

"Whereas by a resolution of president and directors of the Richmond, Fredericksburg and Potomac Railroad Company, submitted to the common council, it appears it is deemed most expedient by the president and directors to conduct the said railroad from the Richmond turnpike, along H street to a point at or near the intersection of said street and 8th street, and for the present to terminate the same by suitable connections with the contemplated warehouses and workshops of the company on lots Nos. 477 and 478, purchased by them from John Heth—

"Resolved, That the common council do approve the proposed location of the said railroad and the present termination of the same, as described in the foregoing resolution, and authorize the prosecution of the said work within the limits of the city, on the above location: provided, that in locating the said railroad no injury shall be done to the water-pipes now laid in and along said street: provided, that the corporation of Richmond shall not be considered as hereby parting with any power or chartered privilege not necessary to the railroad

226 company for constructing the said railroad and connecting the same with the depot of said company within the limits of the city."

There is nothing in the record to show that any exception was taken to this action. The company, under the authority of that action, proceeded to construct its road, and has been for nearly forty years exercising all the corporate privileges incident thereto. Its proposed terminal point was never approved absolutely. It was approved only subject to express conditions. If the company had then believed that the council had no right to impose those conditions, the simplest good faith would have required that before exercising any privilege granted on

such conditions the council should have been advised, when it would have been clearly within their power to deny any unconditional privilege beyond the outermost boundary-line of the city.

I cannot attribute to the directory any purpose to entrap the council into an incautious surrender of any municipal right over the streets of the city; and I must regard their action as an expression of the then conceded extent of their corporate rights; especially am I compelled to do this when, as it appears from the record, this action was had in the month of December, within two or three weeks after the general assembly had commenced its sessions in this city, and resort might have been readily made to that body for a determination of any controverted question between the company and the city.

But if this be not a just construction of the charter, I think the action just referred to, of the directory of the road, estops them from disputing it. If the privileges of the company were as extensive as is now claimed, the directory might have made a valid contract with the council of Richmond to waive or surrender them, in consideration of the privilege of penetrating into the heart of the city. Private stockholders might possibly have complained of any such contract, but the company, in any question between itself and the city of Richmond, must be unquestionably bound by it.

I am, therefore, of opinion that the rights of the appellants to the user and enjoyment of their railroad-track within the limits of the city of Richmond, as it then was, are to be measured by the action of the council of Dec. 23d, 1834.

No subsequent grant from or contract with the State has enlarged them, and I do not see in this record that there can be any reasonable claim that any subsequent grant from or contract with the city has enlarged them. The record does show that, all along the long interval of years which has elapsed, there has been frequent contention between the city and the company as to the extent of their respective rights, but there is no recorded action of the council which has to any extent relinquished the rights of the city, as reserved in the action of Dec., '34.

It is true that upon one occasion, when action by the council ad-
227 verse to the company was invoked by the petition of sundry citizens, a compromise was made between the city and the company, by which the company assumed the obligation to pay a portion of the expense of paving Broad street, and did actually pay sum $7,000. This payment, however, was made simply in consideration of the non-action of the council, and constitutes no claim to any abatement of the rights of the city as they stand upon this record.

In reverting then to the action of the council of Dec. 23d, 1834, it is very clear that the reservation in the proviso to the city of all power and chartered privilege not necessary to the company for constructing their railroad and connecting the same with the depot, as designated, excludes any claim of the appellants to the user of steam as a propelling power when prohibited by the municipal authorities of the city.

I am of opinion, therefore, that the ordinance of Sept. 8th, 1873, is valid and obligatory upon the appellants, and the violation of the ordinance being conceded, the judgment of the police-justice inflicting the fine must be affirmed.

The following is a copy of the summons issued by the police-justice, with the return and endorsements thereon:

Summons.

CITY OF RICHMOND, *to wit:*

To any police-officer of said city:

Summon Richmond, Fredericksburg and Potomac Railroad Co. to appear before me or some other justice of the peace of said city, at the police-justice's court in the Odd-Fellows' hall, on the 7th day of January, 1874, at the hour of 9½ o'clock a. m., to show cause, if any they can, why a fine of five hundred dollars should not be imposed on them for violation of ordinance of said city in running a steam-engine on Broad street, east of Belvidere street, in said city, on the 1st day of January, 1874. And be you then there to certify what you have done in the execution thereof.

Given under my hand and seal in said city, this 2nd day of January, 1874.

[SEAL.] J. J. WHITE,
Police-Justice.

Return.

Executed by delivering a true copy of the within summons to E. D. T. Myers, sup't, on the 2d day of Jan'y, 1874, at 12 o'cl'k m.

E. H. CHALKLEY,
Serg't of Police.

228 (Endorsed:)

IN POLICE COURT, CITY RICHMOND,
Jan'y 7th, 1874.

The defendants to the within cause admitted the violation of the ordinance, but denied its validity. The court, desiring to hear argument in the case, continued to the 14th Jan'y, 1874.

IN POLICE COURT, CITY RICHMOND,
Jan'y 14th, 1864.

The within cause was again called, and, after partial argument, was continued to the 17th day Jan'y, 1874.

IN POLICE COURT, CITY RICHMOND,
Jan'y 17th, 1874.

This cause was again called and argument concluded. The court adjudged the ordinance valid, and it was considered that the defendants pay a fine of five hundred ($500) dollars. From the judgment of the court an appeal was taken to the circuit court of the city of Richmond, which is hereby certified. The appeal bond, dated 27th Jan'y, 1874, accompanies this summons.

J. J. WHITE,
P. J. C. R.

A true transcript of the record.

Teste:

ALFRED SHEILD, *Clk.*

The fee of the clerk of the circuit court of the city of Richmond for this transcript of the record is one hundred and fourteen dollars and ninety cents.

Teste:

ALFRED SHEILD, *Clk.*

A copy. Teste:

GEO. L. CHRISTIAN, *C. C.*

229 And at another day, to wit, at a supreme court of appeals of Virginia, held on the 9 day of December, 1874, came the parties, by their counsel, and on their motion and for reasons appearing to the court, it was ordered that this cause be set down to be heard as a privileged cause.

And at another day, to wit, at a supreme court of appeals of Virginia, held on the 29 day of January, 1875, this cause was partly heard upon the transcript of the record of the judgment aforesaid and the arguments of counsel, and continued until the next day.

And at another day, to wit, at a supreme court of appeals of Virginia, held on the 30 day of January, 1875, this cause was further heard upon the transcript of the record of the judgment aforesaid and the arguments of counsel, and continued till the Tuesday then next following, the 2d instant.

And at another day, to wit, at a supreme court of appeals of Virginia, held on the 2 day of February, 1875, this cause was fully heard upon the transcript of the record of the judgment aforesaid and the
230 arguments of counsel, but because the court was not then advised of the judgment to be given in the premises, time was taken to consider thereof.

And at another day, to wit, at a supreme court of appeals of Virginia, held on the 1 day of April, 1875, came again the parties, by their counsel, and the court having maturely considered the transcript of the record of the judgment aforesaid and the arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the said judgment.

Therefore, it is considered by the court here that the same be affirmed, and that the defendant in error recover against the plaintiff in error damages, according to law, and its costs by it about its defense in this behalf expended.

And the court certifies that in the decision of this cause there was drawn in question the construction of a clause of the Constitution of the United States, and that the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution: which certificate the court makes at the instance of the counsel for the plaintiff in error.

Which is ordered to be certified to the said circuit court of the city of Richmond.

231 And now at this day, to wit, at a supreme court of appeals of Virginia, held on the same day and year first herein mentioned, to wit, Wednesday, the 28 day of April, 1875, came again the parties, by their counsel, and, on the motion of the plaintiff in error, and for reasons appearing to the court, it is ordered that the judgment entered herein on the 1st instant be, and the same is hereby set aside; and the court, having maturely considered the transcript of the record of the judgment aforesaid and the arguments of counsel, is of opinion, for reasons stated in writing and filed with the record, that there is no error in the judgment of the said circuit court. Therefore it is considered by the court here that the same be affirmed, and that the defendant in error recover against the plaintiff in error damages according to law, and its costs by it about its defence in this behalf expended. And at the instance of the

counsel for the plaintiff in error, the court certifies that in the record and at the hearing of this cause there was drawn in question the validity of an ordinance of the city of Richmond "to amend the third section of the ordinance to regulate the use of Broad street by the Richmond,
232 Fredericksburg and Potomac Railroad Company," enacted September 8, 1873, alleged to have been enacted in pursuance and under authority of a statute of the State of Virginia, "providing a charter for the city of Richmond," approved May 24, 1870, on the ground that the said ordinance is repugnant to the first clause of the tenth article of the Constitution of the United States, and that the decision of this court is in favor of the validity of the said ordinance and against the title, right, and privilege set up and claimed under the said clause of the said Constitution by the said plaintiffs in error, to use and run along Broad street in said city locomotives propelled by steam power, in opposition to the said ordinance.

233 Which is ordered to be certified to the said circuit court of the city of Richmond.

The reasons in writing for the opinion of the court, as stated in the foregoing order, are in the words and figures following, to wit:

Opinion.

RICHMOND, FREDERICKSBURG & POTOMAC R. R. Co. *vs.* THE CITY OF RICHMOND.	Opinion of J. Christian.

This case is before us upon a writ of error to a judgment of the circuit court of the city of Richmond affirming a judgment of the police-justice of said city, imposing a fine upon the plaintiff in error for running its cars propelled by steam upon Broad st., east of Belvidere street, in violation of a city ordinance passed September 8th, 1873.

This ordinance is entitled "An ordinance to amend the 3rd section of an ordinance to regulate the use of Broad street by the Richmond, Fredericksburg, and Potomac Railroad Company," and is in the following words:

"Be it ordained by the council of the city of Richmond, That
234 section three of an ordinance passed May 13th, 1872, entitled an ordinance to regulate the use of Broad street by the Richmond Fredericksburg, and Potomac Railroad Company, be amended and re ordained so as to read as follows: 'Sec. 3. That on and after the 1st day of Jan'y, 1874, no car, engine, carriage, or other vehicle of any kind belonging to or used by the Richmond, Fredericksburg & Potomac Railroad Company shall be drawn or propelled by steam upon that part of their railroad or railway track on Broad street, east of Belvidere street, in said city. The penalty for failing to comply with this section shall be not less than one hundred nor more than five hundred dollars for each and every offense, to be recovered before the police justice of the city of Richmond.'"

The plaintiff in error (the railroad company) admits the violation of this ordinance, but contends the ordinance is invalid because it is in violation of its chartered rights.

On the other hand the city of Richmond claims that it has the right, not only under the general police power vested in it as a municipal corporation, which antedates and overrides the charter of the railroad company, but under authority conferred upon the city council by act

235 of the legislature amending the city charter, to the exercise of the complete and absolute authority to regulate the use of Broad street by the said railroad company.

The legislature, by an act providing a charter for the city of Richmond, approved May 24th, 1870, vested in the council of said city the power "to prevent the cumbering of streets, avenues, walks, public squares, lanes, alleys, or bridges in any manner whatsoever," and the power "to determine and designate the route and grade of any railroad to be laid in said city, and to restrain and regulate the rate of speed of locomotives, engines, and cars upon the railroads within said city, and may wholly exclude said engines or cars if they please, provided no contract may be thereby violated."

It is insisted by the counsel for the railroad company that this provision of the charter of the city of Richmond cannot be executed against it, because it is excluded from its operation by the proviso, inasmuch as by its charter it has the right by contract forever, and under all circumstances, to run its cars by steam through the whole length of Broad street to its depot and terminus at the corner of 8th and Broad streets.

236 The question, therefore, we have to determine is whether the ordinance of the city council is void and invalid because it is in violation of the chartered rights of the said railroad company, and therefore violates the obligation of the contract between the State and the said railroad company as evidenced and declared by said charter of incorporation.

We are therefore called upon to examine carefully the provisions of that act, and to determine whether the State has by an ever-continuing contract committed itself for all time to this railroad company to run its cars propelled by steam through the heart of the capital city of the Commonwealth, and through the most important and populous streets of that city, without regard to the safety, comfort, and convenience of its citizens, and without regard to the general prosperity and welfare of the whole city.

The Richmond, Fredericksburg & Potomac Railroad Company was incorporated by an act of the legislature of the State, passed February 25th, 1834.

This act provided that, under the direction of certain persons therein named, books should be opened at Richmond, Fredericksburg, and other places, "for the purpose of receiving subscriptions to the amount of seven hundred thousand dollars, in shares of one hundred
237 dollars each, to constitute a joint capital stock company for the purpose of making a railroad from some point within the corporation of Richmond, to be approved by the common council, to some point within the corporation of Fredericksburg, and for the purpose of extending the same, should the company hereby incorporated at the commencement of the work or at any time afterwards deem it advisable to do so, from its termination within the town of Fredericksburg to the Potomac River or some creek thereof, and for providing everything convenient and necessary for the purpose of transportation on the same." Sess. acts, 1834.

The only other section of the act (which comprises 38 sections) necessary to be referred to is the 24th section, which is as follows: § 24. "The president and directors, or a majority of them, shall have power to purchase with the funds of the said company, and place on the railroad constructed by them under this act, all machines, waggons, vehicles,

carriages, and teams of any description whatsoever which they may deem necessary & proper for the purposes of transportation."

These are the two sections of the act upon which the railroad
238 company relies to shew that the ordinance of the city council is void and invalid as to it, because they create a contract which is perpetual with the State, permitting them to run their engines for all time on Broad street. These two sections will be considered more particularly presently.

The record further shews that on the 22d Dec'r, 1834, at a meeting of the president and directors of the Richmond and Fredericksburg Railroad Company, the following preamble and resolutions were adopted:

"Whereas by the act incorporating this company it is requisite that the point at which the railroad terminates within the corporation of Richmond should be approved by the common council, and it appears to the board most expedient to conduct the same from the Richmond turnpike along H street (now Broad street) to a point at or near the intersection of the said street and 8th street, and for the present to terminate the same by suitable connections with the contemplated warehouses and workshops of the company on lots Nos. 177, 178, purchased by them from John Heth; Therefore,

"Be it resolved, That the approbation of the city council be requested to the above plan.

239 "Resolved, That the president cause a copy of the foregoing resolutions to be transmitted to the city council," &c.

In response to the resolutions of the president and directors of the Richmond, Fredericksburg & Potomac R. R. Company, the city council on the 23rd Dec'r, 1834, adopted the following preamble & resolution:

"Whereas by a resolution of the president and directors of the Richmond, Fredericksburg and Potomac R. R. Co., submitted to the common council, it appears that it is deemed most expedient by the president and directors to conduct the said railroad from the Richmond turnpike along the street to a point at or near the intersection of said street and 8th street, and for the present to terminate the same by suitable connections with the contemplated warehouses and workshops of the company on lots Nos. 177, 178, purchased by them from John Heth:

"Resolved, That the common council do approve the proposed location of the said railroad, and the present termination of the same as described in the foregoing resolution, and authorize the prosecution of the said work within the limit of the city on the above location: Pro-
240 vided, That in locating the said railroad no injury shall be done to the water-pipes now laid on and along said street: Provided further, That the corporation of Richmond shall not be considered as hereby parting with any power or chartered privilege not necessary to the said railroad company for constructing said railroad and connecting the same with the depot of said company within the limits of the city."

These proceedings of the city council and the two sections of the act of incorporation above quoted constitute the foundation of the claim on the part of the railroad company of a perpetual and irrepealable contract between the State and that company, by which for all time and under all circumstances they may run their cars propelled by steam through one of the principal and most populous streets of the capital city of the Commonwealth.

It will be conceded that if such contract exists at all, it originated in the two sections of the act of incorporation and proceedings thereunder above quoted. These, therefore, require a careful and candid consideration.

241 It is apparent that by the first section of the act incorporating the railroad company the legislature delegated to the city council of Richmond the power to select the terminal point within the corporate limits of the city, and under this act the railroad company could locate its terminus at such point within the city of Richmond as should be approved by the city council.

This plain construction of the first section is recognized and acted upon by the president and directors of the railroad company when they declare in the resolutions adopted by them and sent to the city council that "it is requisite that the point at which the railroad terminates within the corporation of Richmond should be approved by the city council."

And the city council in approving the terminal point suggested by the president and directors of the Richmond, Fredericksburg & Potomac R. R. Co. adopted it (the intersection of 8th & Broad st's) as the then "present termination of the same," and upon the express condition "that the corporation of Richmond shall not be considered as hereby parting with any power or chartered privilege not necessary to the railroad company for constructing said railroad and connecting the same with
242 the depot of said company within the limits of the city."

Upon this construction of the 1st section, and with these plainly-expressed conditions, asserting in emphatic terms the chartered powers and privileges of the corporation of the city of Richmond, the railroad company adopted the corner of 8th and Broad st's as the terminal point within the city of Richmond from which they should build their road, and on which they built their depot & warehouses, &c.

In the resolutions approving the terminal point (without which approval the railroad company could not have commenced their work beginning within the corporation of Richmond) we find the express and positive reservation of all the chartered rights and powers of the municipality. These included an absolute and entire control over the streets of the city, excepting only the privilege to the railroad company of constructing and connecting their road with the depot on Broad st. Not a syllable is recorded about the mode or manner of transportation, whether by horse-power or steam, the entire regulation of that subject being reserved to the corporation with the rest of its chartered powers.

243 It is argued, however, that the 24th section of the act of incorporation above quoted, giving to the company the power "to purchase and place upon their road all machines, vehicles, &c., of any description whatsoever which they may deem necessary and proper for the purposes of transportation," confers upon the company the authority to run locomotives within the city limits.

This reasoning is altogether inconclusive and illogical. If the assent of the city council had been absolute and unconditional, this view would not been sound. It is manifest that this 24th section is a general provision, extending to the whole road. The road passes through the counties of Henrico, Hanover, Caroline, and Spottsylvania. The legislature did not require these counties to give their assent to the construction of the road, because these counties have no chartered rights and privileges, and in those counties the railroad company acquired not only a right of way but an absolute right of property in their road and necessary property acquired in those counties, because as empowered by their charter they condemned the lands of individuals for their
244 purposes and paid them an equivalent in money; but the legislature did require the assent of the city authorities before the company could lawfully pass its boundaries.

Within the limits of the city of Richmond all the right which the company acquired was the right of way over the street for transportation of passengers and freight. This right was subject to the right inherent in the municipal authorities to control the use of the streets and to protect the safety, comfort, and general welfare of the citizens of the municipality. The general right, therefore, to use machines on their road, as provided in the 24th section, does not embrace the right, against the consent of the city authorities, to use locomotives on one of the principal and most populous streets of the city.

It is worthy of remark that the city council have ever since the approval of the terminal point in 1839 constantly asserted their right to prohibit the introduction of steam-engines into the city. In 1845, after much contention for years on the subject between the railroad company and the city authorities, on motion of Mr Wickham, one of the
245 most distinguished citizens as well as one of the most learned lawyers of the city, the following resolution prepared by him was adopted by the city council:

"Resolved, That the council of the city of Richmond not only maintains its right to prohibit the use of locomotives within the city whensoever it shall appear expedient to do so, but, in contradiction to all allegation to the contrary, they do most positively deny all responsibility to indemnify the railroad company for any such exercise of its legitimate powers. They admit no other right in this respect on the part of that company but to a favorable and indulgent consideration—a claim which, from its nature, becomes less and less the longer it is favored."

Up to the present time the city council have repeatedly and constantly asserted their right to prohibit the use of locomotives within the city limits, which they might or might not exercise in their own discretion, according as the safety and welfare of the citizens should require.

This right was as firmly maintained and confidently asserted under the general chartered powers and the rights inherent in every
246 municipal corporation to guard and protect the safety of the citizens, and to regulate the use of the streets of the city, from the very inception of the construction of the railroad as it is now, when by the amended charter above referred to, of the city, special power is conferred upon the city council to regulate the rate of speed of locomotives, engines, & cars upon the railroads within the city, and to wholly exclude said engines and cars if they please, "provided no contract will be thereby violated." But the railroad company confidently rely upon this proviso, and it is earnestly argued that the adoption by the legislature of this proviso was a recognition of the claim of the railroad company to run their locomotives on Broad street for all time.

This pretension is unreasonable and illogical. The only fair and legitimate inference to be drawn from the adoption of this proviso is that the legislature, aware of the controversy between the city authorities and the railroad company on this subject, left it as an open question for the courts to decide whether the chartered powers and privileges
247 of the corporation of Richmond had been so modified and restricted by the act incorporating the Richmond, Fredericksburg & Potomac R. R. Co. as to deprive the corporate authorities of the right to prohibit the company from running steam-engines on the streets of the city. This question was not intended to be decided by the legislature, but was reserved as a judicial question. The legislative declaration by the amended charter was simply that the city council should have power to regulate the speed of locomotives and remove them altogether, if in so doing no contract was violated; and the question as to

the violation of the contract rights of the company is by that proviso submitted to judicial determination, and that is the main question now submitted to this court.

Now it must be borne in mind that when the act incorporating the R., F. & P. R. R. Company was passed by the legislature, in 1839, the charter of the city of Richmond was then in existence, and certainly none of the provisions of that charter were repealed by the adoption of the act incorporating the railroad company, but remained in full force and effect.

By the charter of the city the corporate authorities are invested
248 with the power to make and establish such by-laws, rules, and ordinances, not contrary to the constitution or laws of the Commonwealth, as shall be by them thought necessary for the good ordering and government of such persons as shall from time to time reside within the limits of said city and corporation or shall be concerned in interest therein. Not only were they invested with these chartered rights, specifically conferred by the terms of the charter, but with all those powers and privileges which by law are inherent in every municipal corporation, to guard the safety and promote the comfort and welfare of the corporation.

The railroad company accepted their charter, not only subject to existing laws and chartered corporate powers vested in the corporation of Richmond, but they adopted the terminal point of their road within the corporate limits, approved by the city council with the express reservation "that the corporation of Richmond shall not be considered as parting with any power or chartered privilege not necessary to the railroad company for constructing the said road," &c.

It is conceded that a charter granted to a corporation by the
249 State may be, according to its terms, a contract between the State and corporation, the obligation of which cannot be impaired by subsequent legislation; but at the same time, while this is conceded, it is also certainly true that corporations, like natural persons, are subject to remedial legislation and amenable to general laws. Private corporations, even without any express reservation of the powers over them by the legislature in their charters, are subject like individuals to be restrained, limited, and controlled in the exercise of their powers by such laws as the legislature may pass based upon the principles of safety to the public.

It is well settled and cannot now be disputed that the legislature may control the action, prescribe the functions and duties of corporations, and impose restraints upon them to the same extent as upon natural persons, subject of course to the limitation of not impairing the obligation of contracts made between the corporation and the State. See Redfield on Railways, 128 & note, & cases there cited.

"A corporation is," in the language of Chief-Justice Marshall in Dartmouth College v. Woodward, 4 Wheat., 518, "the mere creature of the law. It possesses only those properties which the charter of
250 its creation confers upon it, either expressly or as incidental to its very existence." And, as was expressed by the same great judge in Providence Bank v. Billings, 4 Pet., 514, "any privileges which may exempt a corporation from the burdens common to individuals do not flow necessarily from the charter, but must be expressed in it or they do not exist."

A cardinal rule in the interpretation of charters of incorporation is thus laid down by Mr. Justice Grier, in Richmond Railway Co. v. The Louisa Railway Co., 13 How., 71: "Public grants are to be construed

strictly, and any ambiguity in the terms of the grant must operate against the corporation and in favor of the public, and the corporation can claim nothing but what is clearly given by the act."

In Charles River Bridge v. Warren Bridge, 11 Peters, 548, Ch. Justice Taney, enforcing the same rule, said: "The continued existence of a government would be of no great value if by implications and presumptions it was disarmed of the powers necessary to accomplish the ends of its creation and the functions it was designed to perform transferred to privileged corporations," and this eminent jurist concludes his discussion of the subject by the declaration "that no claim in
251 any way abridging the most unlimited exercise of the legislative power over persons, natural or artificial, can be successfully asserted except upon the basis of an express grant in terms or by necessary implication."

Applying these rules of law and canons of interpretation to the charter of the Richmond, Fredericksburg and Potomac Railroad Company, it is clear that there is nothing in the privileges and franchises conferred by that charter which prevents the legislature, either of itself or through a municipal corporation to which it has delegated its authority, from prescribing rules and regulations for the exercise of these privileges and franchises; and it is equally clear that the authority granted in the charter of incorporation to construct a road "from a point within the corporation of Richmond, to be approved by the city council, to a point within the corporation of Fredericksburg," and the authority "to place upon said road machines and other vehicles necessary for the purposes of transportation," do not constitute a contract by which the said company may for all time run their engines upon Broad street, within the corporation of Richmond, and which perpetually prohibits legislative interference and control. Nor upon the most
252 liberal rules of interpretation can it be said that the charter has conferred such extraordinary and unlimited powers upon this corporation either "by express grant in terms or by necessary implication." Certainly there is no such express grant in the charter of incorporation. It cannot be implied from the fact that one of its terminal points was to be within the corporate limits of Richmond.

The power to lay its track and move its cars through one of the streets of the city does not necessarily imply the power to move them by steam; nor does the authority to use steam-engines on their road necessarily imply a perpetual grant for all time to run steam-engines through the most populous streets of the city.

To give to the charter such an interpretation would be to hold, not only that the legislature had deliberately violated the chartered rights of the principal and capital city of the commonwealth by depriving it of the power to protect the public safety and promote the public welfare, but that the legislature had tied its own hands and placed this corporation above and beyond the reach of the law. Before we
253 can reach such a conclusion, we must see in the charter itself either an express grant in terms, or one which arises from the most patent and necessary implication. Seeing neither, I am forced to the conclusion that it was competent for the legislature to confer upon the city council the power "to regulate the rate of speed of locomotives, engines, and cars upon the railroads within the city of Richmond, and to wholly exclude said engines if they please," and that the ordinance passed in conformity with this act is valid.

Nor do I perceive that this ordinance is unreasonable and oppressive,

and for that reason, as was argued by the learned counsel for the plaintiff in error, ought to be set aside.

This company was chartered more than forty years ago. At that time much of what is now known as Broad st. was a mere turnpike, neither graded nor paved, with, scattered here and there, houses on each side. It is now one of the most attractive and populous streets in the city. It being the most level and the widest street, and one most
254 convenient to that part which contains the largest number of private residences, Broad street has now become the principal street for the shops and retail business of this growing city. There is not only on this street a large and constantly-growing resident population, but crowds are attracted to it every day and all hours of the day from all parts of the city, especially ladies and children, from the fact that this street has now become the great mart for supplying the wants of families in the varied and multiform retail business necessary to meet the wants of a populous and growing city.

It is not, therefore, "unreasonable" that the city council should under this change of circumstances prohibit the use of steam engines on this street.

The voluminous evidence taken in this case not only shews that these locomotives have had the effect to injure the business and general prosperity of this principal street, and consequently of the whole city, but it is also proved that, notwithstanding the great care and watchfulness with which this railroad has been managed, the use of steam power has been the occasion of many fearful accidents.

255 And under the general police power inherent in every municipal corporation, (independent of the special powers conferred by the legislature "to regulate the rate of speed" of their engines, "or to remove them if they please,") the city council might well exercise this authority. This general police power existing in the legislature is transferred to every municipal corporation, to be exercised by it for the protection of the safety and general welfare of the citizens of such corporation, and in the exercise of such authority the municipal legislature (the city council) must, of necessity, be invested with a very large discretion. (See Ogden v. Saunders, 12 Wheat., 270; Fisher v. Harrisburg, 2 Grant, P'a cases, 291; St Louis v. Weber, 44 Mo. R., 547; Com'th v. Robertson, 5 Cush., 442.)

As was said by Mr Justice Benham, in City of New York v. Miles, 11 Peters, 139, in speaking of the general police power of a State, "By virtue of this, it is not only the right but the bounden and solemn duty of a State to advance the safety, happiness, and prosperity of its people, and provide for its general welfare by any and every act of legis-
256 lation which it may deem conducive to these ends, where the power over the particular subject of its exercise is not surrendered or restrained. All those powers which relate to merely municipal legislation, or which may perhaps more properly be called internal police, are not thus surrendered or restrained, and consequently in relation to these the authority of the State is complete, unqualified, and exclusive."

"This police power," says Ch. J. Redfield, in Thorpe v. R. R. Co., 27 Vermont, 149, "extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State. It must, of course, be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others."

The same eminent judge and author says in his valuable work on the law of railways: "There are confessedly certain essential franchises of

such corporations (railroad companies) which are not subject to legislative control, and at the same time it cannot be doubted that these artificial beings or persons, the creatures of the law, are equally subject to
legislative control, and in the same particulars precisely as natural
257 persons. Railroads, so far as the regulation of their own police, effecting the public safety, both as to life and property, and also the general police power of the State, as to their unreasonable disturbance of and interference with other rights, either by the noise of their engines in places of public concourse, as in the streets of a city, or damage to property either in public streets or highways—there can be no question whatever, are subject to the right of legislative control." (2 Red. on Rail., § 232.)

And again, referring to the case of the Buffalo & Niagara Falls Railway v. City of Buffalo, 5 Hill, (N. Y.,) 109, the author says: "It has been held that a statute giving power to a common council of a city to regulate the running of cars within the corporate limits authorizes the adoption of an ordinance entirely prohibiting the propelling of cars by steam through any part of the city. We should entertain no doubt of the right of the municipal authorities of a city or large town to adopt such an ordinance, without any special legislative sanction, by virtue of the general supervision which they have over the police of their respective jurisdictions."

Such must have been the opinion of the court in the case last
258 referred to. Nelson, Ch. J., says: "A train of cars impelled by the force of steam through a populous city may expose the inhabitants and all who resort thither for business or pleasure to unreasonable perils; so much so that, unless conducted with more than human watchfulness, the running of the cars (in that mode) may well be regarded as a public nuisance." (Ib., § 250, p. 646.)

In "Pierce on American Railroad Law," the doctrine on this subject is thus succinctly and clearly laid down under the head of "police laws:" "A railroad company, although no power is reserved to amend or repeal its charter, is nevertheless subject, like individuals, to such police laws as the legislature may from time to time enact for the protection and safety of citizens and the general convenience and good order. These laws, although imposing liabilities and duties on the company other than those contained in its charter or existing when it was granted, do not impair the obligations of the contract implied therein."

"Its property and essential franchises are, indeed, protected by the constitution, but the company itself is not thereby placed above the
laws. It seems not to have been the design of that instrument to
259 disarm the States of power to pass laws to protect the lives, limbs, health, and morals of citizens, and to regulate their conduct towards each other. Such laws may incidentally impair the value of franchises or of rights held under contract, but they are passed diverso intuitu, and are not within the constitutional inhibition."

Without multiplying authorities on this point, I will simply refer to the following cases: Vanderbilt v. Adams, 7 Cowen, 349; Cowles v. May, N. Y., Ib., 585; Baker v. Boston, 12 Pick., 194; 10 Barb., 245; 45 Me, 560; 5 Hill, 269.

But it is insisted by the learned and able counsel for the appellant that the ordinance of the city council complained of takes from the company one of its essential franchises, and seriously affects their rights of property without compensation, and is therefore void and invalid.

It has already been shown that upon a fair construction of the charter of the Richmond, Fredericksburg & Potomac Railroad Company there

was no contract, either express or implied, by which the State bound itself, for all time and under all circumstances, to permit the company to run its locomotives through the streets of the city, and that the
260 ordinance violated no contract rights of the company.

Does it violate any essential franchise, and does it appropriate any property of the company? Clearly not. The ordinance does not prevent the company from making its connections with the depot on Broad st., but only regulates the mode by which these connections are to be made. It only declares that these connections shall not be made by steam. It only says to the company that the public safety and the general welfare of the city, in the opinion of the city council, (who are competent to judge of this matter, as the municipal legislature,) requires now that the locomotives shall no longer traverse this most important street, because it exposes the inhabitants to unreasonable and constant perils, and seriously affects the prosperity of the whole city. In doing this the city council are acting within their legitimate powers. They have violated no chartered rights; they have interfered with no essential franchise.

Nor can the railroad company claim any compensation, for in so doing the city council have not appropriated for the public use one dollar of the property of the company. It may be the company may in a
261 certain sense and to some extent be the loser by this ordinance, but upon well-established principles they have no claim to compensation, because there is here no appropriation of company's property or violation of its essential franchises, but only a regulation of the mode in which these chartered rights and franchises may be exercised, and the company, like natural persons, must be subject always (unless protected by chartered rights or constitutional inhibition) to the salutary and all-pervading maxim of the law, Sic retentus ut alienum non lædas.

The law is well established by indisputable authority and the universal assent of an enlightened jurisprudence that every person (artificial as well as natural) holds his property subject to the limitation expressed by this maxim, exercised either by the legislature directly or by public corporations to which the legislature may delegate it. Laws and ordinances relating to the safety, comfort, health, convenience, good order, and general welfare of the inhabitants are comprehensively styled "police laws or regulations." And it is well settled that laws and regulations of this character, though they may disturb the
262 enjoyment of individual rights, are not unconstitutional, though no provision is made for compensation for such disturbances. They do not appropriate private property for public use, but simply regulate its use and enjoyment by the owner. If he suffers injury, it is either damnum absque injuria, or, in the theory of law, he is compensated for it by sharing in the general benefits which the regulations are intended and calculated to secure.

The citizen owns his property absolutely, it is true; it cannot be taken from him for any private use whatever without his consent, nor for any public use without compensation; still, he owns it subject to this restriction, namely, that it must be so used as not to injure others, and that the sovereign authority may by police regulations so direct the use of it that it shall not prove pernicious to his neighbors or to the citizens generally.

These regulations rest on another maxim, Salus populi suprema est lex. This power to restrain a private injurious use of property is very different from the eminent domain. Under the latter, compensation must always be made; but under the former it is not a taking of pri-

vate property for public use, but a salutary restraint of a noxious
263 use by the owner, contrary to the maxim "Sic utere tuo alienum non laedas." See Dillon on Corporations, vol. 1st, p. 209, 210, and cases there cited.

In Commonwealth v. Alger, (7 Cush., 85,) Ch.-J. Shaw, in an able and exhaustive opinion, in which the police power as contradistinguished from the right of eminent domain is discussed, and is peculiarly applicable to this case, says:

"We think it is a settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it may be so regulated that it shall not be injurious to the equal enjoyment of others having an equal right to the enjoyment of their property, nor injurious to the rights of the community. * * * Rights of property, like all other social and conventional rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious, and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may
264 think necessary and expedient. This is very different from the right of eminent domain—the right of a government to take and appropriate private property to public use whenever the public exigency requires it, which can be done only on condition of providing a reasonable compensation therefor. The power we allude to is rather the police power, the power vested in the legislature by the constitution to make, ordain, and establish all manner of wholesome and reasonable laws, statutes, and ordinances, either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the commonwealth and of the subjects of the same."

There are many cases in which such a power is exercised by all well-ordered governments, and where its fitness is so obvious as to be recognized by all as reasonable and proper. Such are the laws to prohibit the use of warehouses for the storage of gunpowder near habitations or highways; to restrain the height to which wooden buildings may be erected in populous neighborhoods, and require them to be covered
265 with slate or other incumbustible material; to prohibit buildings from being used for hospitals for contagious diseases, or for the carrying on noxious or offensive trades; to prohibit the raising of a dam and causing stagnant water to spread over meadows near inhabited villages, thereby raising noxious exhalations injurious to health and dangerous to life. And so, upon precisely the same principle, a railroad company may be prohibited from running their cars propelled by steam through the crowded streets of a populous city, thereby subjecting property to serious injury and human life to constant and unreasonable perils.

Nor does the prohibition of the noxious use of property, although it may diminish the profits of the owner, make it an appropriation to a public use so as to entitle the owner to compensation. If the owner of a warehouse in the midst of a city could store in it quantities of gunpowder he might save the expense of transportation and storage at a distant point. If a landlord could let his building for a small-pox hospital or a slaughter-house he might obtain an increased rent. If a railroad company is permitted to run their cars through the
266 streets of a city, propelled by steam, it might be less expensive and more convenient than if the same were drawn by horses.

But all these are restrained, not because the public have occasion to

make the like use or make any use of the property, or to take any benefit or profit to themselves for it, but because it would be a noxious use contrary to the maxim, Sic utere tuo ut alienum non lædas. It is not an appropriation of the property to a public use but the restraint of an injurious private use by the owner, and is therefore not within the principle of property taken under the right of eminent domain.

This distinction is manifest in principle and is recognized by unquestioned authority. Commonwealth v. Alger, 7 Cush., 53; Commonwealth v. York City, 11 Met., 55; Baker v. Boston, 12 Pick., 184; Wadleigh v. Gillman, 12 Me, 403; Vanderbilt v. Adams, 7 Cowen, 349; Cowles v. Mayor, &c., New York, 7 Cowen, 585; 1 Dillon on Corporations, § 93, p. 209-210; 2 Ib., § 565, & cases there cited.

I am of opinion, for the reasons given, that the ordinance
267 complained of is within the scope and power of municipal authority; that this power has not been unreasonably or oppressively exercised; that the ordinance merely preventing the use of locomotives on the streets does not impair the obligation of any contract nor violate the chartered rights or any essentia' franchise of the railroad company, and that it is therefore valid and of full force and effect.

The judgment of the circuit court should be affirmed.

The following is a copy of a letter from the attorney for the city of Richmond to the judges of the court of appeals, the original of which is filed with the record in the clerk's office of said court:

R. F. & P. R. R. Co.
v.
CITY OF RICHMOND.

To the honorable judges of the supreme court of appeals of Virginia:

The counsel of the railroad company in this cause desire to have certain maps, filed by my consent in the court of appeals, trans-
268 ferred to the Supreme Court of the United States, along with and as a part of the record. I have no objection to such proceeding.

Very respectfully,

LEIGH R. PAGE,
Att'y for the City of Richmond.

Which maps referred to in the foregoing letter are hereto affixed and made a part of the record in this cause, as follows:

(Here follows map of Baltimore City, map of New York City, map of Philadelphia. Exhibits X, Y, Z.)

269 *Statement by the clerk.*

At the request of the counsel for the Richmond, Fredericksburg and Potomac Railroad Company, the clerk of the supreme court of appeals states that Judge Moncure, the president of the court, did not sit on the hearing of this cause in this court, because he was related to some of the parties in interest: and that Judge Staples, one of the judges who did sit on such hearing, dissented from the opinion of the court which was concurred in by the three remaining judges.

STATE OF VIRGINIA,
City of Richmond, to wit:

I, George L. Christian, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the foregoing is a true transcript of the record of the cause of the Richmond, Fredericksburg and Potomac Railroad Company against The City of Richmond, lately decided by the said court.

In testimony whereof I hereto subscribe my name and annex
270 the seal of the said supreme court of appeals, at Richmond, this 13th day of May, 1875.

[SEAL.] GEO. L. CHRISTIAN.

Fee for copy of record, $78; tax on seal of court, 1—$79.00.

271 UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the judges of the supreme court of appeals of the State of Virginia, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the Richmond, Fredericksburg and Potomac Railroad Company, plaintiff in error, and The City of Richmond, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United
272 States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said Richmond, Fredericksburg and Potomac Railroad Company, as by its complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and custom of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the twenty-fourth day of April, in the year of our Lord one thousand eight hundred and seventy-five.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

M. R. WAITE,
Chief-Justice.

(Indorsed:) A copy of the within writ of error was filed in the cl'k's office of the supreme court of appeals of Va., Ap'l 27th, 1875.

GEO. L. CHRISTIAN, *C.*

273 The United States of America to The City of Richmond, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein the Richmond, Fredericksburg and Potomac Railroad Company is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief-Justice of the Supreme Court of the United States, this twenty-fourth day of April, in the year of our Lord one thousand eight hundred and seventy-five.

M. R. WAITE,
Chief-Justice.

274 On this twenty-seventh day of April, in the year of our Lord one thousand eight hundred and seventy-five, personally appeared Temple Ellett, before me, the subscriber, and makes oath that he delivered a true copy of the within citation to A. M. Keily, mayor of the city of Richmond, on this the twenty-seventh day of April, in the year one thousand eight hundred and seventy-five.

TEMPLE ELLETT.

Sworn to and subscribed the 27th day of April, A. D. 1875.

THOS S. ATKINS,
U. S. Comm'r, E. Dist. Va.

275 (Copy.)

Know all men by these presents that we, the Richmond, Fredericksburg and Potomac Railroad Company, Peter V. Daniel, j'r, and Herbert A. Claiborne, are held and firmly bound unto the city of Richmond in the full and just sum of one thousand dollars, to be paid to the said city of Richmond, certain attorney, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this twenty-second day of April, in the year of our Lord one thousand eight hundred and seventy-five.

Whereas lately, at a supreme court of appeals of Virginia, held on the first day of April, 1875, in a suit depending in said court, between The Richmond, Fredericksburg and Potomac Railroad Company, plaintiff in error, and The City of Richmond, defendant in error, judgment was rendered against the said Richmond, Fredericksburg and Potomac Railroad Company, and the said Richmond, Fredericksburg and Potomac Railroad Company, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said City of Richmond aforesaid, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such that if the Richmond, Fredericksburg and Potomac Railroad Company shall prosecute said writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

(SEAL OF CORPORATION.) THE RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD COMPANY.

(Signed) By JNO. M. ROBINSON, *Pres't.* [L. S.]

(Signed) P. V. DANIEL, JR. [L. S.]

(Signed) HERBERT A. CLAIBORNE. [L. S.]

Sealed and delivered in presence of—

(Signed) J. E. WILSON.

(Signed) E. F. D. MYERS.

Approved by—

M. R. WAITE,
Chief Justice.

576 STATE OF VIRGINIA,
Eastern District, City of Richmond.

I, M. F. Pleasants, clerk of the circuit court of the United States for the eastern district of Virginia, do hereby certify that the obligors whose names are signed to the within written bond are the owners in fee simple of property the value of which exceeds by more than one thousand dollars the amount of all debts for which they are liable.

Given under my hand this 22d day of April, A. D. 1875.

(Signed) M. F. PLEASANTS, *Clerk.*

Endorsed: The bond of which the within is a copy was filed in the clk's. office of the supreme court of appeals of Va. Apl 27th, 1875. Geo. L. Christian, C.

Indorsement on cover: No. 150. The Richmond, Fredericksburg & Potomac Railroad Company, plaintiff in error, vs. The City of Richmond. Virginia sup. ct. of appeals. Filed 8th October, 1875.

IN THE

Supreme Court of United States.

[No. 130.]

The Richmond, Fredericksburg and Potomac Railroad Co.	*Plaintiffs in error.*
vs.	
The City of Richmond.	*Defendants in error.*

In Error to the Supreme Court of Appeals of the State of Virginia.

BRIEF OF ARGUMENT.

P. V. DANIEL, Jr.,
with
CONWAY ROBINSON,
Counsel for Plaintiffs in Error.

CLEMMITT & JONES, PRINTERS.

IN THE

Supreme Court of the United States.

[No. 150.]

THE RICHMOND, FREDERICKSBURG AND POTOMAC RAILROAD CO. } *Plaintiffs in error,*

vs.

THE CITY OF RICHMOND. } *Defendants in error.*

In error to the Supreme Court of Appeals of the State of Virginia.

STATEMENT OF THE CASE.

The legislature of the state of Virginia passed, on the 25 of February, 1834, "an act incorporating the stockholders of the Richmond; Fredericksburg and Potomac railroad company;" which act is printed in the session acts of that state for 1833–'34, p. 127 *et seq.*, and also printed at length in the record of this case, p. 13, *et seq.* The questions involved arise under this act; and especially under certain sections thereof specified in the petition to the Supreme Court of Appeals of Virginia, p. 2, *et seq.* Under this act the company, who are plaintiffs in this writ of error, became incorporated "for the purpose of making a railroad from some point within the corporation of Richmond, to be approved by the common council, to some point within the corporation of Fredericksburg, and for the purpose of extending the same," "and for providing everything necessary and convenient for the purpose of transportation on the same" (§ 1). By this act the president and directors

are "invested with all the rights and powers necessary for the construction, repair and maintaining of a railroad" (§ 7) "located as aforesaid." Especially are they empowered (§ 24) "to purchase, with the funds of the said company, and place on the railroad constructed by them under this act, all *machines*, wagons, vehicles, carriages and teams of any description whatsoever, which they may deem necessary or proper for the purposes of transportation." The machines, wagons, vehicles and carriages, so purchased, and the works constructed, are (by § 25) "exempt from any public charge or tax whatsoever," and by § 36 if any person or persons shall wilfully injure, *impair* or destroy any part of the railroad or "any of the necessary works, *machines*, wagons, vehicles or carriages belonging to the company," it is made a punishable offense (See pp. 13, 15, 21 and 23 of printed record).

It being requisite that the point within the corporation of Richmond, *from* which the railroad should be made, or at which it should terminate, should be approved by the common council, and it appearing to the board of directors on the 22d of December, 1834, most expedient to conduct the same from what was then called the Richmond turnpike, along H street to a point at or near the intersection of said street and Eighth street, and there to terminate the same by suitable connections with the contemplated warehouses and workshops of the company, on lots Nos. 477 and 478, which had been purchased by the company, the board, by a resolution of that date (December 22, 1834), requested the approbation of the common council to this plan; and the common council, by a resolution of the 23d of the same month, did "approve the proposed location of the said railroad and the present termination of the same, as described in the" resolution of the board, "and authorized the prosecution of the said work within the limits of the city on the above location" (See pp. 24 and 27 of record). Thereupon the company made its railroad from that point

within the corporation of Richmond, approved by the common council, and erected an extensive depot at that point.

Before this time, and indeed before the passage of the act of February 25, 1834, the railroad from the Roanoke to Petersburg had been completed and locomotives used upon it for the purpose of transportation, and their use was contemplated by and under the act of February 25, 1834, which gave as full power to use them as had been given to the Petersburg railroad company (printed record p. 30, 60, 62, 64).

On the 15th of February, 1836, the business of transportation was commenced on the railroad. Shortly before that day, some of the residents on Shockoe Hill expressed the opinion that the railroad company should not be permitted to use locomotive power for propelling their cars within the city. Their resolutions as to this and other matters being submitted to the common council and referred to the commissioners of streets with certain instructions, the resolution of the council was laid before the board on the 15th of February, 1836. In reply thereto, the board made a communication stating that under power given by the act of incorporation, they had "purchased and placed on the railroad a locomotive engine and other machines proper for the purposes of transportation;" that "their plans, so far as the same relates to travel on the said road on H street, is to have the cars drawn by a locomotive;" but that "they have adopted a resolution directing their engineers not to suffer the locomotive, while in the city, to proceed at a rate exceeding three miles per hour." Upon receiving this answer, which contained also a reply as to other matters, "the commissioners of streets recommended, and the common council adopted, a resolution instructing the commissioners to enquire into the expediency of causing H street to be paved from the eastern side of Eighth street to the western side of Brook avenue, and to ascertain from the president and directors of the railroad company whether

they would incur any, and if any, what portion of the expense attending the same." After a communication from the commissioners of streets to a committee of the company, and from the committe to the commissioners, showing the views on each side, the city surveyor was directed "to prepare and submit a plan, the most judicious to be adopted, for paving H street from Brook avenue to the eastern side of Eighth street, having a regard as well to the *just rights and interests* of the city as to those *of the railroad company* in the use of said street." Whereupon the city surveyor did "submit, *as a compromise of interests*," a certain plan; the commissioners of streets unanimously approved it; and the committee of the railroad company, while expressing the opinion that the company was asked to bear a larger portion of the expense than was reasonable, came to the conclusion to yield their assent, and it was given accordingly. The commissioners of streets made a report, stating that having considered the importance of the work, the advantageous terms upon which it was understood it could be effected, and "the very liberal proposition of the railroad company, they unanimously recommended to the common council to cause the work to be executed agreeably to the plan submitted by the city surveyor, and that the proposition of the railroad company should be accepted." And this report was adopted by the common council on the 20th March, 1836 (printed record pp. 31–34 and 59).

While these proceedings were going on between the common council and the commissioners of streets on the one hand, and the railroad company and its committee on the other, the locomotives were running daily on H street. The commissioners of streets, therefore, acted not only with full knowledge of the ground on which the right of the company to run locomotives rested under its charter, but with full evidence of the actual effects produced by the running. With both this knowledge and this evidence, it was very distinctly understood in the interviews which took

place between the commissioners of streets and the committee of the railroad company, that upon the company's agreeing to pay the part which it was asked to pay of the expense of paving, there would be an end to all action upon the resolutions adopted at the meeting of residents on Shockoe Hill. The part which the company undertook to pay—amounting to nearly seven thousand dollars—was paid; and the street, which was formerly remarkable for having the deepest mud in winter and the deepest dust in summer, was now handsomely paved.

Upon a dark night, in the winter of 1836–7, two horses came in contact with the locomotive, and, under the peculiar circumstances of the case, the company paid to the owner their value. Although, with this single exception, there had not resulted from the use of locomotives in the city, during two years and eight months that they had been running, any injury either to persons or property; yet in the fall of 1838, on a petition of some of the citizens of Richmond, praying the common council to prohibit the use of locomotive engines upon the streets of the city, a resolution was reported to the common council by its committee, declaring it expedient and proper to make such prohibition by ordinance (P. R., p. 34). A committee of the railroad company, to whom was referred this petition and resolution, examined into the rights of the company, and made a report on the 22d of October, 1838, stating their views of its rights, and their conclusion that "the right given it by its charter, the expense which it encountered in building and fitting up its depot, after the hall approved the termination, and the understanding at the time this company agreed to bear so large a share of the expense of paving H street, create rights which cannot lawfully be divested." Upon that occasion it was deemed sufficient to make known the nature of those rights. This report was approved. A copy thereof was transmitted to the common council, and it was published in newspapers of the city.

Under the act of 1782 "incorporating the town of Richmond," 11 Hen. Stat., p. 45, ch. 25, the powers of the municipal corporation were exceedingly limited; and as regards any question in this cause there was no material addition to these powers until since the act of February 25, 1834, incorporating the railroad company; nor until since the proceedings in 1834, 1836 and 1838, before mentioned. After these proceedings there was an act of February 21, 1842, the 47th section whereof (Sess. Acts, p. 49,) is as follows:

"The council shall have power to prevent the practice of firing guns, crackers or any combination of gun-powder or other combustible and dangerous materials therein; to prevent the riding or driving of horses or animals or the running of steam engines at an improper speed within the limits of said city, and wholly to exclude the said engines if they please, *provided no contract be thereby violated.*"

The act of March 30, 1852, revising and reducing into one act the provisions of the charter of the city, contains in § 30, p. 263, similar language as to the council:

"They may prevent the riding or driving of horses or other animals, or the running of steam engines, at an improper speed within said limits, or exclude said engines, *provided no contract be thereby violated.*"

Some additional words are used in the act of March 18, 1861, ch. 88, § 55, p. 165, and in the act of May 24, 1870, ch. 101, § 19, div. 10: but in each section it is "*provided no contract be thereby violated.*"

After this cautious language of the legislature, so often used and intended to show that good faith must be observed by the state and city, and after a lapse of thirty-four or thirty-three years since the proceedings of 1838, there have been new proceedings of a remarkable character; not mere resolutions of the council of the city expressive of an opinion against the rights which the railroad company distinctly claimed in 1836, and no less distinctly insisted upon in 1838; not mere resolutions for judicial proceedings to

determine the validity or invalidity of the rights so claimed and insisted upon, or to ascertain whether there exists good cause for restraining the farther exercise of those rights; but proceedings in the form of an ordinance or by-law passed by one party to this controversy (P. R. pp. 25, 26), and enforced by officers compensated by that same party for their official services. There was a summons to appear before a police justice of the city to show cause why a fine of five hundred dollars should not be imposed on the railroad company for violation of the ordinance, in running a steam engine on Broad street, east of Belvidere street, in said city, on the 1st day of January, 1874; and the police justice held the ordinance valid, and pronounced judgment that the company pay a fine of $500—(P. R., p. 186). An appeal being allowed, and the case involving the constitutionality or validity of the ordinance or by-law, the appeal was cognizable by the circuit court having jurisdiction over the corporation in which the judgment was rendered. The case was submitted to the circuit court upon the evidence and admissions set forth in a bill of exceptions, commencing on p. 9. The evidence shows not only that locomotives are used at the present day in the streets of Petersburg, Portsmouth and Norfolk in Virginia, as well as in streets of towns and cities out of Virginia, but also shows that in streets of Petersburg and Norfolk they were used before December, 1834, and shows the surrounding circumstances when the company and the common council were acting in that month, in February and March, 1836, and in the fall of 1838 (P. R., pp. 60–64). Pages 65 to 177 are depositions taken in a chancery suit, admitted by the attorney for the city of Richmond (p. 65), to be read in evidence in this case precisely as if they had been regularly taken taken therein, but excepted to as incompetent and irrelevant. The chancery suit is between Henry Miller and others, plaintiffs, and the railroad company, and the depositions were taken some for the plaintiffs and some for the defendants in that

suit, and relate for the most part to questions as to whether and how far there is danger to persons or injury to property from the use of locomotives on the street; and upon such questions, there is much diversity in the statements and opinions of witnesses. It is, however, clearly established that there has been a constant increase in business and a large increase in the value of property on Broad street. (See P. W. Grubbs, James M. Winston, W. G. Dandridge, J. B. Kidd, J. V. L. McCreery, Wm. J. M. Dowell, J. W. Anderson, Ed. H. Chalkley, P. R., pp. 69, 70, 99, 129–137, 164–172, 145). There is also material evidence on other points. Conway R. Howard, civil engineer, deposes, as to the railroads in the city, the streets on which they run, and for what distances, and the width of those streets, and the fact that steam engines are "used upon all of the said railroads within the city of Richmond." He also speaks as to "other cities in the United States on which some of the streets are occupied by railroads worked by steam engines." (P. R., pp. 137–142.) E. T. D. Myers, a civil engineer, and superintendent of the R. F. & P. R. R. Co., deposes as to the number of engines and trains run daily upon the railroad on Broad street; and also of the increased cost for transportation of passengers and freight if the use of locomotives on Broad street should cease (P. R., pp. 172–177).

It is admitted by the parties, by their counsel (P. R. 175) that in 1834, when the company's charter was granted, the western limits of the city on Broad street were a few feet west of Monroe street, and that the limits of the city on that street now extend very much further west.

For reasons assigned in the opinion (pp. 178–185), the circuit court pronounced the judgment to which the defendants excepted (P. R. 9 to 177).

Whereupon there was a petition to the supreme court of appeals, assigning the errors stated, p. 5 to 8; and a judge of that court awarded a writ of error and supersedeas (p. 8).

At the hearing of the cause, the president of the court did not sit. 26 Grat. 83; P. R. 199. *Christian*, J., delivered an opinion (P. R., p. 188 to 199), in which *Anderson* and *Bouldin*, J's., concurred, and from which *Staples*, J., dissented. 26 Grat. 107; P. R. 199. For reasons stated in that opinion, the judgment of the circuit court was, in April, 1875, affirmed by the supreme court of appeals. P. R. 187. And then the court certified as follows:

"That in the record and at the hearing of this cause there was drawn in ques-
"tion the validity of an ordinance of the city of Richmond 'to amend the third
"section of the ordinance, to regulate the use of Broad street by the Richmond,
"Fredericksburg and Potomac railroad company' enacted September 8th, 1873,
"alleged to have been enacted in pursuance and under authority of a statute
"of Virginia 'providing a charter for the city of Richmond' approved May
"24th, 1870, on the ground that the said ordinance is repugnant to the first
"clause of the tenth article of the constitution of the United States, and that the
"decision of this court is in favor of the validity of the said ordinance and against
"the title right and privilege set up and claimed under the said clause of the said
"constitution, by the said plaintiffs in error, to use and run along Broad street in
"said city, locomotives propelled by steam power in opposition to said ordinance."

The petition (p. 1 of P. R.) set forth that there has been a final judgment in a suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a statute of, or an authority exercised under, a state on the ground of their being repugnant to the constitution of the United States, and the decision is in favour of their validity; and where a title, right, privilege or immunity is claimed under the constitution, and the decision is against the title, right, privilege or immunity specially set up or claimed under the constitution. In order that said final judgment may be reëxamined and reversed or affirmed in this court, a writ of error was awarded. P. R. 1.

ASSIGNMENT OF ERRORS.

The plaintiffs in error contend that the Supreme Court of Appeals of Virginia erred in its judgment affirming the judgment of the Circuit Court of the city of Richmond, which decided that the ordinances of the city council prohibiting, under penalties, the use of locomotive engines on the railroads of the plaintiffs in error on Broad street, were valid and not in violation of the constitution of the United States; and the plaintiffs in error set out separately and specifically the following as the errors asserted and intended to be urged.

1st. By the act of the legislature of the state of Virginia incorporating the Richmond, Fredericksburg and Potomac railroad company, and what was done in consequence thereof there was a complete and valid contract between the state and the company, giving to the company the right to use locomotive engines on the street in question; and the ordinance of the city claimed by the city to be under authority of the state given in the charter of the city, impaired and violated the obligation of that contract; and was therefore in opposition to the first clause of the tenth section of the first article of the constitution of the United States.

2d. The facts appearing on the record constitute not only a contract with the railroad company by and under a law of the state, but a complete and executed contract with the railroad company by the city, whereby the city is precluded and estopped from preventing or attempting to prevent the use of locomotive engines on the railroad on H, now Broad street; and that which the city claims to be by virtue of an authority exercised under the state, and which is done by and under the ordinance passed by the council of the city (pp. 25, 26 of P. R.), impairs the obligation of contracts, and is in violation of the first clause of the tenth section of the constitution of the United States.

3d. The state could not make or enforce any law, nor can the city by virtue or under color of a law of the state make or enforce any ordinance which shall abridge the privileges or immunities of citizens of the United States; nor can the state or the city deprive any person of property without due process of law; nor can the state or the city deny to any person within its jurisdiction the equal protection of the laws. What has been done or attempted to be done by and under said ordinances (pp. 25, 26 of P. R.,) is in violation of the first clause of the fourteenth amendment to the constitution of the United States.

BRIEF OF THE ARGUMENT.

Referring to, and insisting upon, such of the positions taken, and such of the authorities cited in the petition (p. 5 to 9 of P. R.) as are applicable to the preceding assignment of errors in this court, this brief will now exhibit a more particular statement of points to be discussed.

As the first error assigned, it is insisted that the ordinance in question does inevitably and most injuriously violate the vested "contract right" of the appellants, created by the contract between them and the supreme legislature of the state, contained in their charter of incorporation.

The supreme legislature of the state, which in legislation represents the sovereignty of the state, and whose legislative authority is limited only by the constitution of the commonwealth, the principles of "common right and reason," and by the constitution of the United States (Cooley on Const. Lim., pages 87–8; *People* v. *Draper*, 15 N. Y. Rep., 543), by its enactment of the charter of the Richmond, Fredericksburg and Potomac railroad company, passed February 25th, 1834, (Session Acts, 1833–4, ch. iii, pp. 127–8–9, sec. 1; P. R., p. 13 *et seq.*,) conferred upon this company the right and franchise "of making a railroad "from some point *within* the corporation of Richmond, to

"be approved by the common council, to some point with-"in the corporation of Fredericksburg," and "of extending "the same to the Potomac river," &c., &c.; also, "of exer-"cising *all* the powers, rights and privileges which other "corporate bodies may do *for the purpose mentioned in this* "*act;*" (Ib., sec. 3;) also, "to purchase and *place on the rail-*"*road all machines*, wagons, vehicles, carriages and teams of "*any description whatsoever*, which *they* may deem necessary "or proper for the purposes of transportation." *Ibid*, sec. 24.

The vested right, therefore, of this company, to construct and maintain their railroad "WITHIN *the city of Richmond*," from a point "to be approved by the council," and to place and use thereon locomotive engines and other "machines "and vehicles *of any description whatsoever*," is *not* derived, (as is contended by those opposing the exercise of this right,) from any authority or right, revocable or irrevocable, of the *city council;* but from the authoritative grant of the supreme legislature of the state, made to the company in consideration of the construction and maintenance by it, of a very costly work for the *public use and benefit.* This grant constitutes a *contract*, executed between the state and the company, conferring, *for valuable consideration*, vested rights upon the company, and on its stockholders, which cannot be impaired by any act of the state itself, or of the city council, *deriving all its powers from the state*, without such a violation of the constitution of the United States, (art. i, sec. 10,) as would render any such enactment void and of no lawful authority. *Dartmouth College* v. *Woodward*, 4 Wheaton, 519; *Planters Bank* v. *Sharp*, 6 Howard, 301; *Fletcher* v. *Peck*, 6 Cranch, 87; *Terrett* v. *Taylor*, 9 Cranch, 43; *New Jersey* v. *Wilson*, 7 Cranch, 164; *Gordon & Chester* v. *Appeal Tax Court*, 3 Howard, 133; *State Bank of Ohio* v. *Knoop*, 16 How., 369; *R. and Danville R. R. Co.* v, *City of Richmond*, 21 Gratt., 604; *State* v. *Noyes*, 47 Maine, 189, 205, 206.

As the state cannot transcend the constitution, so a corporation acting by its grant must, of course, be bound by that supreme law, which limits even the powers that created it a corporation. Angell & Ames on Corp., ch. 10, §3, p. 273 of edi. 1843; §333, p. 356 of edi. 1875.

The *sole* function of the city council as to the franchise in question, and the sole authority delegated to the council, limit the exercise of that franchise, were simply to "approve 'the point *within* the corporation of Richmond,'" selected by the company, as that from which the railroad should be made. When that point, *having been so selected by the company*, had been so approved by the council, *their* whole authority to limit the exercise of this franchise was forever ended; and the company's vested right to enjoy that franchise, "*within* the corporation of Richmond," *from that point*, was as complete as it was outside of the corporation.

If it had been the intention of the legislature to make this company's franchise to make a railroad from "some point within the corporation of Richmond," dependent on the consent and control of the council, very different language would have been used, as was done in the *nearly cotemporaneous* charter of the Richmond and Petersburg railroad company, (Sess. Acts, 1835-6, ch. 121, p. 146), in which it was "Provided, that nothing herein contained "shall be construed as granting the privilege of extending "the railroad along any of the streets of the city of Rich- "mond, or town of Petersburg, *except with the consent of the* "*common council of the said city* or town, or along any of the "streets of the town of Manchester, except with the con- "sent of the said town." This act *of the legislature* is *in pari materia*, as well as nearly cotemporaneous with that incorporating this company, and therefore gives important aid to the true construction of the latter. See Potter's Dwarris on Statutes, p. 189, and cases cited in note 9.

To sustain his argument, there is an assumption in the

opinion of the circuit judge, which conflicts with the actual facts of this case. He argues (p. 182) that at the date, 23d Dec., 1834, when the "approval" of the city council to the "point" "within the corporation" selected for the terminus of the railroad was sought and obtained, "not one dol- "lar had been contributed or expended by the stockholders "or company on the faith of any promise by the state."

Not only is this assumption not sustained by any evidence in this cause, but the charter itself required (sec. 3 and 4) that before the subscribers to the company should "be incorporated into a company," and have any corporate existence or powers, "three thousand shares," or three hundred thousand dollars "should be subscribed," and that "upon any "subscription of stock as aforesaid, there shall be paid *at* "*the time of subscribing*, the sum of two dollars on every "share subscribed" (or $6,000 before the organization of the company), "and the residue thereof shall be paid in "such installments, and at such time, as it may be required "by the president and directors of the said company," And when it is remembered that, before any location of the terminus in Richmond of this railroad could be selected or proposed to the council, extensive surveys for alternative locations of the road must necessarily be made, involving heavy expenses for a corps of engineers—even suposing (what is not true) that no work of construction had been done—and that the company had been then organized and in active operation more than six months, during which further installments had been required of and paid by subscribers, the extent of this last mentioned error of fact, on which this argument is based, becomes more conspicuous. Although this large expenditure of money certainly strengthened—if it had any need of strengthening—the company's equitable claim upon the state, for the faithful compliance with its legislative contract, it was not at all necessary to the existence of that contract.

The mere grant of franchises by the state and the ac-

ceptance of them by the company with the assumption of the duties incidental to them, alone sufficed to make such a contract impregnable, Cooley on Const. Lim., 274, 279. As said by C. J. Marshall in *Fletcher* v. *Peck*, 6 Cranch 137, "A grant in its own nature, amounts to an extinguishment "of the right of the grantor, and implies a contract, not to "re-assert that right." "In fact, a grant is a contract exe- "cuted."

Equally in conflict with this well settled principle of law is the argument of the circuit judge in this opinion, that if the company's "charter had provided that the terminal "point of the road was to be approved by the general as- "sembly, there could have been no question that all such "franchises within the city were reserved for subsequent "legislation, and were to be dependent upon the limita- "tions, restrictions and conditions of subsequent legisla- "tion." Even the supreme legislature, which in the charter of the company had granted to it the complete and essential franchises of constructing and operating, "within "the corporation," its railroad; of "providing everything "*necessary and* CONVENIENT for the purpose of transportation "on the same," with "all MACHINES, wagons, vehicles," &c., "*whatsoever*, which *they* may deem necessary OR *proper* for "the purposes of transportation," leaving nothing undetermined but the terminal "point within the corporation" to be selected by the company and "approved by" (even the legislature), could not, after the company had accepted this charter and expended large sums of money on the faith of it, violate or "impair" its legislative contract, in whole or in part, by retracting or modifying the franchises granted in it, making the mere function of "approving" or disapproving the terminal point "within the corporation," of this railroad, the occasion, opportunity or pretext for imposing *new* "limitations, restrictions or conditions" upon the exercise of franchises previously granted and accepted. This would be an attempt alike discreditable and unavail-

ing to do *indirectly* what it would not be pretended the legislature could do directly, consistently with the constitution of the United States.

And if this could not be done by the supreme legislature of the state, *a fortiori*, could it not be done by a mere municipal corporation, which had *no* authority as to this subject except what had been expressly delegated to it by the legislature, and which, in its own charter, the sole source of its existence and of its powers, was *expressly prohibited* (Sess. Acts 1869–70, ch. 101, p. 125,) from passing any such ordinance as that here complained of, if "thereby any *contract* be violated."

Even if the right of this company to use steam engines on its railroad in Broad street *had* been in any, the least degree, dependent on the consent of the city council, the city would be estopped from denying that right, or its consent to the exercise of it, after remaining quiescent, without one word of objection, while the company, during the year 1835, expended very large sums of money in *erecting engine houses and machine shops*, as well as warehouses and other buildings, at the corner of Broad and Eighth streets, *which would be useless there if the engines were excluded from them.*

And although on the 9th of March, 1835, a committee of the council was appointed (see P. R., 28) "to bring in an "'ordinance for regulating the *use* of H (Broad) street by "'the Richmond, Fredericksburg and Potomac railroad "company,'" no question was then raised by that committee, or by the council, as to the right of the company to use steam engines in that street.

Again in February, 1836 (P. R., p. 28), resolutions having been adopted by a meeting of residents on Shockoe Hill (on or near Broad street), (record p. 28) remonstrating against the use of locomotive engines, the council appointed a committee to ascertain from the railroad company "what are to be their future plans and operations so far as they

"relate to travel on H (Broad) street," and in response *to this* enquiry the directory of the railroad company made to the council promptly the following communication (p. 31 printed record):

"The railroad having been made along H street, from a "point approved by the common council, the president "and directors *under power given by the act of incorporation*, "have purchased and placed on the railroad a *locomotive en-* "*gine* and *other machines* proper for the purposes of trans- "portation. Their plan, so far as the same relates to travel "on the said road on H street, is to have the cars *drawn by* "*a locomotive*. It has occured to them that it might not be "prudent for the *locomotive* to go so fast *within* the corpora- "tion as *it* will after leaving the city, and accordingly they "have adopted a resolution directing their engineers not to "suffer the *locomotive*, *while in the city*, to proceed at a rate "exceeding three miles per hour."

This "plan" for regulating the use of H (Broad) street "by the R. F. and P. R. R. Co." was on the 30th of March, 1836, formally approved and adopted by the council (printed record, p. 28) without the slighest intimation of objection to the use of locomotives, notwithstanding the remonstrance of the meeting of citizens on the preceding 28th of January; and although they knew that the "plan" involved an additional expenditure by the railroad company of nearly $7,000 (p. 34 of printed record) for paving Broad street, "liberally" contributed by the company upon the faith of their being undisturbed in that use. Nor was the company's right to that use ever questioned by the council until November, 1838, nor such question acted on by it until January 21st, 1839 (pp. 36 and 46 of printed record), when a resolution was adopted by the council merely expressing the *opinion* that they had the right (which they did not then deem it expedient to exercise) to prohibit the use of locomotives on Broad street. Nor was this mere opinion of members of the council founded on any advice of the law

officer of that body, to whom on more than one occasion since that time they have referred this question for professional advice without obtaining any sustaining that "opinion" (printed record, pp. 50, 51).

At the date of the enactment of the company's charter in February, 1834, locomotive engines were running on a railroad in the neighboring Virginia city of Petersburg, under a similar charter, as they have done there ever since; and at the dates of these last named measures of the city council of Richmond in 1836, '38 and 39, locomotive engines were used (as they have been ever since) on railroads in the other Virginia cities of Portsmouth and Winchester, no one questioning the lawfulness of such use either there and then, or subsequently in the cities of Norfolk and Lynchburg.

(See depositions of R. B. Haxall, Saml. Watts, Thos. P. Atkinson and C. F. M. Garnett, pp. 60, 62 and 64 of printed record.)

The recital of these facts furnishes a complete answer to the intimation by the circuit judge of bad faith on the part of the railroad company in not again immediately and more explicitly *re-asserting* their right to use locomotives in Broad street, after the city council had added to its resolution of December 23d, 1834, approving the location of the railroad to the corner of Broad and Eighth streets, the proviso, "That the corporation of Richmond shall not be con-"sidered as hereby parting with any power or chartered "privilege not necessary to the railroad company for con-"structing the said railroad and connecting the same with "the depot of said company within the limits of the city."

The facts just recited fully shew, that at that time, *neither* the *council* nor the company considered or supposed the right to exclude locomotives from Broad street to be one of these "powers or chartered privileges" of the corporation of Richmond: but *both* parties *then* concurred in the correct view of the question presented in the communication of the

railroad directory to the council of February 15th, 1836 (printed record, p. 31), that they had purchased and proposed to use on their railroad in Broad street "locomotive "engines and other machines *under power given by the act of "incorpoation of the company;*" and that in asking and obtaining the approval by the council of the point "within the corporation," *from* which the railroad was to be made, *neither the council* nor the company regarded or "had a right to regard this" (as assumed and asserted by the circuit judge), "as an application for privileges" to be granted by the council, which the legislature had already granted.

With how much more justice could bad faith be imputed to the council, in permitting the railroad company to incur these very large expenditures without one word of warning, that they might at any time be rendered unavailing and useless by the refusal of the council to longer permit the use of locomotives in Broad street?

Nor could the council reasonably pretend to suppose, that the company was making these large expenditures for the sake of a use which was only "temporary" and precarious, dependent for its duration on the will or caprice of the council. The very nature and extent of these expenditures alone suffice to refute any such idea. And the explanation of the true meaning of the words "for the present" used in the resolutions of the railroad directory and of the city council in December, 1834 (printed record, pp. 27–'8 and 31), is fully explained in the depositions of Moncure Robinson (pp. 56–'7), of Conway Robinson (pp. 58–'9), and of R. Barton Haxall (pp. 60–'2 of pr. record), shewing conclusively, that these words referred—not to any future *abandonment* of the railroad in Broad street—but to a future *extension* of it (under proper authority), *from* the terminal point selected—as it was by military power temporarily extended during the late war) along Eighth street to connect it with the Richmond and Petersburg railroad on Eighth beyond Byrd street, and thereby *uniting* the *links* in the only

continuous chain of railroads then projected between the northern and southern states via Washington, Richmond, Petersburg, Weldon and Wilmington, N. C. (see depositions of Moncure Robinson, p. 56–'7, of Conway Robinson, p. 58–'9 of printed record).

These words, moreover, by every just rule of construction, relate primarily and specially to the words immediately following them (pr. record, pp. 27 and 31), "to termi- "nate the same by *suitable connections, with the contemplated* "*warehouses and workshops of the company, on lots Nos.* 477 "*and* 478, at the corner of Broad and Eight streets. These "*connections*" would necessarily "terminate" only "for the "present," this railroad in Richmond; if it were afterwards extended, by lawful authority, along Eighth street, to the depot of the Richmond and Petersburg railroad, on Byrd street, to which point the "warehouses and workshops of "the company" might, in *that event*, have been removed; when these "suitable connections with lots Nos. 477 and 478," on Broad street, would be no longer needed, and the railroad having been extended thence along Eighth street to Byrd, would, *in that event*, be no longer "terminated" at those lots. But as that extension to Byrd street has never been made (except "temporarily" during the late war, for military purposes by the Confederate government), and *until it should be made*, this termination of the railroad at the corner of Broad and Eighth streets, by suitable connections with lots 477 and 478 (which, in view of this possible future extension to Byrd street, under authority to be subsequently obtained from the legislature, was, in 1834, spoken of as made "for the present,") was *necessarily the* "*point* within "the corporation of Richmond," "*from*" *which, alone*, the railroad company *could*, under its charter, "make ANY" "railroad to" *any* other point in the state, and from which it might be legally compelled to make it, if it accepted any portion of that charter. For the benefit to the citizens, not merely of Richmond, but of the whole state and country,

resulting from the location of the terminal station of this railroad in a central part of the city, convenient to trade and commerce, as well as to the public houses and private residences, was one of the leading inducements to the grant of these franchises to the company.

And it was in accordance with these views that the company (which, as the evidence in this record shows, had contributed so much to the trade and prosperity of Richmond,) being pressed and harassed by continued hostile legislation of the city council, made, in a spirit of conciliation and compromise, the offer shewn on pages 10–13 of the printed record, for the removal of its terminal station from the corner of Broad and Eighth, to the corner of Byrd and Eighth (connected with its railroad at the western end of Broad street by the connection railroad, constructed in 1867). This offer merely stipulated that, first: The city should pay to the company for its Broad street property, the price at which it was assessed for taxes by the officers of the city itself; 2d. That necessary time be allowed for the removal; 3d. That this company, in conjunction with two other railroad companies there entering the city, might have, so far as the city could give it, the use for depot purposes, of a few hundred feet of 8th street, where it terminates at the railroad bridge over James river, and where no lots not owned by these companies fronted on it; and 4th. That the city should, so far as it could, guarantee that this company should be exempt from further disturbance by the city authorities, in the enjoyment of this new terminal station and of its access to it. But this very liberal offer, proposing a plan which was then practicable, and which was recommended to the adoption of the council by its committee, was rejected, and simultaneously an ordinance was passed by the council (subsequently repealed and re-enacted,) peremptorily excluding the railroad engines from Broad street. That plan has since become impracticable, and the city now seeks to expel this Richmond, Fredericks-

burg and Potomac Railroad Co. from its only practicable terminal station in Richmond, at a ruinous sacrifice, under forced sales of its property acquired by virtue of the act of the legislature, with the approval and *long continued* consent of the city council! Into the comparative equity, good faith and liberality, which have characterized the past action of the city council and of this company respectively, the company assuredly has no reason to avoid enquiry.

The legislature of the state, in the exercise of its supreme control over the streets of the city, as the public highways of the *state*, might itself have directly designated the particular point "within the corporation of Richmond" "from" which this railroad should be made. The permission to the city council to approve or disapprove the point to be selected, *not by the council*, but by the railroad company, gave to the council no right to do more, but was merely another mode of designating that point adopted by the legislature; a mode which it was under no obligation to adopt, and which it could and doubtless would have superseded and discarded, if the city council had evinced an unreasonable disposition to refuse to approve *any* point reasonably selected by the railroad company, and so defeat the purpose of the legislature to open a public channel of commerce between the business and inhabited parts of the state capital and the cities and country north of it, both within and beyond the limits of the state. *O'Connor* v. *Pittsburg*, 18 Penn. (6 Harris) Rep., 189; *James River and Kanawha Canal Co.* v. *Anderson*, XII Leigh, 278, 307 and 314; *McLaughlin* v. *Railroad Co.*, 5 Richardson, S. C. Reps., 596.

The legislative grant to this company, in its charter, of the franchise to construct and operate a railroad "within the corporation of Richmond," necessarily carried with it the grant of all powers and rights properly incident to the efficient exercise of that franchise. The use of locomotive engines was one of these properly incidental powers. *Rex* v. *Pease*, 1 Nev. & Man. 694, 4 Barn. & Adolph. 30, reviewed

and reaffirmed thirty-seven years later (1869) in *Hammersmith and City Railway Company* v. *Brand*, 4 Law Rep. House of Lords 738, 774; *Enfield Toll-bridge Company* v. *Hartford and N. H. R. R. Co.*, 17 Conn. 462–5; *Black* v. *Phila. and Reading R. R. Co.*, 58 Penn. St. Rep. 8, F. P. Smith, 249; *Vaughn* v. *Taffdale R. R. Co*, 5 H. & N. 679.

That both the legislature in granting this charter, and the city council in approving the point "within the corporation of Richmond" selected by the railroad company for its southern terminus, fully understood and intended that on every part of that railroad, both within and without the city, steam engines might be used as a proper incident to the construction and operation of a railroad, is proved, beyond a reasonable doubt, by the evidence already referred to, showing that at and before those acts of the legislature and of the council, locomotive steam engines were used, not only in cities in other states, but in the other Virginia cities of Petersburg, Portsmouth and Winchester. And yet, in view of these facts, the legislature put no more restriction upon the use of locomotives on this company's road, "within the corporation of Richmond," than upon their use within the corporation of Fredericksburg (where such restrictions would be equally appropriate), or upon any other portion of this company's railroad. Nor did the city council raise any question as to the company's right to that use until *more than three years after* they were formally apprised by the company, in reply to the council's enquiry, that such use would be at once and continuously made by the company of steam engines on Broad street. Had the council, in December, 1834, doubted this right of the railroad company, is it credible that they would have been silent on the subject, and would not have specifically disputed it, when, in their resolution approving the location of the road "within the corporation," they, in their jealous guardianship of the rights of the city, were studiously and

carefully enumerating and imposing all the restrictions and conditions upon the company's use of Broad street, which they believed themselves authorized to impose?

If the city council *had* intended to impose upon this company this or any other condition or restriction upon the use of their railroad in conflict with the franchises granted to the company by the legislature, such action would have been simply *ultra vires* and void, leaving the lawful portion of their resolution, "approving the point within the corporation," complete and fully executed, wholly unaffected by any such unauthorized attempt to make it conditional, (Sedgw. on Stat. & Const. Law., p. 466, *et seq.*, of ed. 1857). The streets of the city are not the property of the municipal corporation, which has not, nor ever had, any fee simple or other title in the soil of them, nor more than an easement or right of way in them. Nor has the city even this easement or right of way *exclusively for itself, or for its citizens*, but only in common with all the citizens of the commonwealth. These streets are *the public highways of the state*, and as such subject only to the control of the supreme legislature of the state, except so far as the *legislature has delegated, during its pleasure*, a portion of its control to the municipal corporation, for the more convenient exercise of police regulations over them. (*O'Connor* v. *Pittsburg*, 18 Penn. St. R., 6 Harris, 189.) When once laid out and opened as streets by the original owners of the soil (as they were by Col. Byrd in the last century, 12 Leigh 282, *note*), they are dedicated as public highways to the *state*, and become subject to its sovereign control through its supreme legislature. Of this dedication a public use alone for twenty years is presumptive evidence. If there be any fee simple or other title in the soil, which yet remains, or can, by disuse of the public easement, revert to any one, it is only in, or can so revert, to the heirs or devisees of the original owner, who made the dedication. All other property in or control over these highways, belongs to the

state, which can at any time grant any special use of them to any corporation or person which, in the judgment of its legislature, will benefit the public.

The case of the Philadelphia and Trenton Railroad Co., 6 Wharton 44, was carried up on *certiorari*, the last section of the bill of exceptions claiming the act of the legislature authorizing the road along the street, to be unconstitutional; that the road was a monopoly; that it "invaded, impaired and destroyed public and private uses of the street, hindering and obstructing the same;" and that it "added new uses to those of said highway, in abridgment of vested rights and in violation of vested rights under which said highway was held." Decided that, "A highway * * * * is the property of the people, not of a particular district, but of the whole state; who constituting as they do the legitimate sovereign, may dispose of it by their representatives, and at their pleasure." * * * * "Such being a highway as a subject of legislative authority, in what respect is a street in an incorporated town to be distinguished from it. A municipal corporation is a separate community; and hence the *notion* that it stands in relation to its streets as the state stands in relation to the highways of its territory. *That* would make it *sovereign* within its precints—*a consequence not to be pretended.*"

In *Mercer* v. *Pittsburg, Ft. Wayne and Chicago R. R. Co.* and *Commonwealth* v. *Same*, 12 Casey (Penn. Rep. 99), Chief Justice Black says: "The right of the supreme legislative power to authorize the building of a railroad on a street or other public highway is now not to be doubted," referring to cases of *Phila. and Trenton R. R. Co.*, 6 Wharton 25, affirmed in *Commonwealth* v. *Erie and N. E. R. R. Co.*, 3 Casey 404; *O'Connor* v. *Pittsburg*, 6 Harris, and in others. See also *James River and Kanawha Canal Co.* v. *Anderson*, 12 Leigh 278, and note p. 282.

If the grantee of such a franchise shall abuse it to the injury of other citizens of the state, such a grantee will

become liable for such injury either to the private suit for damages of the private citizens so injured, or to a public prosecution for creating a nuisance, *under the laws of the state*. But this is exclusively a *judicial* remedy to be sought only in the *courts* of the commonwealth, and *not* to be had in *any ordinance of any municipal corporation* exercising or attempting to exercise, unlimited discretion on the subject. The determination of the question, what constitutes a public nuisance, is the exclusive functions of the *courts* guided by the laws of the *state* and can never be the function of a municipal corporation, unless the power to perform it be *specially* delegated to it by the supreme legislature of the state. And even if it be so delegated, the municipal corporation can never be authorized to declare a franchise in a public highway, *which has been specially granted by the supreme legislature of the state*, to be a nuisance.

In the case of the *New Jersey R. R. and Trans. Co.* v. *Jersey City*, 5 Dutcher, 29 N. J. Rep. 170, it was decided that "The common council may not declare anything a nuisance which cannot be detrimental to the health of the city, or dangerous to its citizens, or is a public inconvenience, and *even then not where the thing complained of is expressly authorized by the supreme legislative power of the state.*"

"The legislation of a municipal corporation must be subordinate to the power to which it owes its existence."

"Where the common council pass an ordinance which they have no power to make, this court will set it aside on ~~certiora~~ *certiorari*, brought by a person who may be affected by it, although no attempt has been made to enforce it."

Indeed, the legislature itself could not lawfully declare the franchise a nuisance in cases like this where the grant had been made in consideration of a public benefit, at great cost to the grantees, and so constituted a legislative contract which could not be impaired without violating the constitutions of both the state and the United States.

Nor is there any validity in the objection raised to the

exercise of this franchise, that it conflicts with the rights and powers vested in the city and in its council by its charter. That charter (11th Hennings' Va. Statutes, pp. 46, 47) could not go further, and did not purport to go further, than to give power to make and establish "by-laws, rules and ordinances *not contrary to the constitution and laws of the commonwealth.*" The act of February 25, 1834 (pr. record, p. 13 *et seq*) is a law of the commonwealth. In respect to what the state granted to the railroad company by that act, no rights or powers are thereby vested in the city or its council, except the mere power given by the first section to approve a point selected by the railroad company within the corporation of Richmond from which the railroad was to be made; and when the council approved such points *its power under that act was exhausted.*

It is then in vain to assume and it is erroneous to assume that the charter of the city is a legislative contract with this municipal corporation which entitles it to invade the franchise now in question. The existing charter of the city (*which specially, in terms, repealed all preceding ones*) was enacted *thirty-six years after* this franchise had been conferred as a vested right on the railroad company in the legislative contract of *its* charter, granted by legislative enactment. If, therefore, in the existing city charter, any right or power *had* been conferred on the city in conflict with the franchise so as aforesaid conferred on the railroad company, such right or power so conferred on the city must constitutionally yield and be subordinate to the *franchise* of the railroad company, which was so conferred on it *more than thirty years before.* But in this very charter of the city such a conflict is especially and cautiously *guarded against* by a declaration of just such a subordination of powers conferred on the city council *to existing vested rights.* In the 10th section of the 3d chapter of that charter (Sess. Acts 1869–'70, ch. 101, p. 125) conferring authority on the council to regulate the use of streets by railroad companies, and the use of

engines upon, or the exclusion of engines from them, it is expressly "*provided, that no contract be violated.*" And when it is remembered that this charter of the city was adopted when *this very question* of the right of the council to exclude from Broad street the engines of the Richmond, Fredericksburg and Potomac railroad company *was*, and *had been* repeatedly, during the thirty years preceding, publicly agitated and discussed, both in the council and in the community, no rational doubt can be entertained, that this proviso was designed by the legislature to protect from even *attempted* violation this very franchise and vested right of this railroad company.

But had neither this proviso nor the existing charter of the city ever been enacted by the legislature, and had this question depended solely on the rights derived by the city under its *first* charter, enacted in 1782, or under any subsequent charter, and on the vested rights and franchises derived by the railroad company under its charter enacted in 1834, it would be still equally true, that no *vested right* was ever conferred on the *city*, nor any authority or power, which could supersede or conflict with the *vested right and franchise* to use locomotives on Broad street, conferred on the railroad in its charter.

The charter of a *municipal* corporation, unlike that of a *private* corporation, is never a legislative contract conferring vested rights. *City of Richmond* v. *R. and D. R. R. Co.*, 21 Gratt. 604; *Terrett* v. *Taylor*, 9 Cranch 52, 53; Cooley on Const. Lim. pp. 191–'2–'3, and cases cited in notes to pp. 192 and 193; Angell & Ames on Corp. § 31.

Dillon on Municipal Corp. See 24. 30. 52

7 Wallace 1 Girard v. Phila.

It is merely a delegation to the municipal corporation of a portion of the legislative functions of the supreme legislature of the state, which can be more conveniently and efficiently exercised by a local government. And these function or powers so delegated, may be at any time, by the supreme legislature, revoked or annulled, either in express terms or by necessary and reasonable implication, from any

subsequent act of the legislature. *Granby* v. *Thurston*, 23 Conn. 416; *Southport* v. *Ogden*, *ibid.* p. 138. Indeed, the whole charter of the city is, at all times, subject to repeal or modification by the legislature; while the charter of this railroad company, which is in all respects a legislative contract, and all the vested rights and franchises granted in that charter, are fully protected by the constitution of the United States from any legislative infringement or change. They cannot be affected by any mere governmental powers, granted to any *municipal* corporation, either *before or after* the date of the charter of the railroad company; for the *special grant* of a *franchise* by the legislature, cannot be frustrated by any such *general* grant of *political* power to a municipal corporation.

It is the duty of courts, in passing on such conflicting acts of the legislature—if so they be or seem to be—to give such a construction to both, as will reconcile them, if possible; if this be not practicable, then the *irrevocable vested rights and franchise* must prevail over *revocable political powers*. *Enfield Toll Bridge* v. *Hartford & New Haven R. R. Co.*, 17 Conn. R., 56, 462; *City of Richmond* v. *Richmond & Danville R. R. Co.*, 21 Gratt., 604; *Newberryport T. P. Co.* v. *Eastern R. R. Co.*, 23 Pick., 328.

Nor can this right claimed by the council to prohibit the use of locomotives on Broad street be found in any "police powers" necessarily inherent in the city government for the protection of the lives and property of its citizens. Such police powers—like all others belonging to the city government—can only be derived by the city from the supreme legislature of the state; and it is at least doubtful whether the *state itself* could exercise them in violation of vested rights and franchises created by its own contract; certainly, not without compensation to the railroad company. Still less could the city exercise them, without any express authority to do so delegated, or attempted to be delegated to it by the state. To justify the exercise even

by the *state* of any such police power, so as to impair the franchise created in her legislative contract, *there must be not only compensation made to the company, but also unquestionable proof that its exercise is necessary* for the protection of the lives and property of its citizens from certain and imminent danger. *Black* v. *Phil. & Reading R. R. Co.*, 8 F. P. Smith (58 Penn. St. Rep. 249); *Drake* v. *Hudson River R. R. Co.*, 7 Barb. 508; *Com'th* v. *Erie & N. Eastern R. R. Co.*, 27 Penn. 339; *Mifflin* v. *R. R. Co.*, 4 Harris (Penn. St. R. 192–'3); case of *Phil. & Trenton R. R. Co.*, 6 Wharton, 44–'6; *Bell* v. *Ohio & Penn. R. R. Co.*, 1 Casey 177; *Lex'n & Ohio R. R. Co.* v. *Applegate*, 8 Dana 289, 304; *State* v. *Noyes*, 47 Maine 189; *Hentz* v. *Long Island R. R. Co.*, 13 Barb. 646.

In this case no such proof has been, nor can be offered; and the court can only act upon *proofs* of the existence of any such necessity, arising from any such certain or imminent perils. On the contrary, during a period of *thirty-eight years*, millions of passengers and many hundred thousands of tons of freight have been carried through the length of Broad street west of Eighth street by means of locomotive engines, with, it may be confidently affirmed, but a small proportion of the accidents or injuries to persons or property which would have resulted from the transportation of *an equal number of persons or of tons of freight during an equal period of time*, by any other means of locomotion. During the late war, thousands of troops at one time, were repeatedly carried, and for six and eight months at a time all the military supplies and munitions for the army of northern Virginia were transported in railroad cars drawn by locomotives through Broad street, and many of them up and down the very steep grade of Eighth street also between the depots of the Richmond and Petersburg railroad and the Richmond and Fredericksburg and Potomac railroad, without a single accident inside of the city.

During each of the annual state agricultural fairs, for many years past, "over twenty-five thousand persons, each

"way, have been carried in open flats, with benches on "them," drawn by locomotives, between the depot, at the "corner of Broad and Eighth streets," and the fair grounds, without "a single accident inside of the city limits." See deposition of T. L. Courtney, p. 135, pr. record.

During the year 1842, and some years after, the same witness, engaged in business in two different stores on Broad street, has seen, on Broad street, between Second and Brooke avenue, "from twenty to twenty-five mountain "wagons at one time, loading and unloading," while the trains were passing, and also between Sixth and Fourth streets, on Broad street, "a great many carriages, both from "town and country, at the different stores, and never knew "of any accident" to them "caused by the trains of the "Richmond, Fredericksburg and Potomac railroad com-"pany."

These facts last mentioned, as to wagons and other vehicles, are also positively testified to by W. G. Dandridge, a merchant who, in two different stores, near First and near Eighth, on Broad street, has been engaged during the last *twenty-seven years* in a large business, as grocer and commission merchant, and who "does not remember to have seen "any accidents occasioned by the running of trains;" and whose "conclusion is, there are as few accidents on Broad "street, considering the population, as on any street in the "city," and that "there is just as much travelling of both "kinds" (on foot and in vehicles drawn by horses) "as on "any other street in the city." See his deposition, questions 6th and 7th, p. 130, pr. record. Also that "it has "been, and is, a common thing for large funeral processions "to go up Broad street" (p. 134), a fact also admitted by F. Laube, undertaker on Broad street, "and member of the Broad street association," at whose instance this suit was instituted, who also admits (28th question cross-examination, p. 119, pr. record) that "Broad street is very much "frequented by vehicles of all sorts drawn by horses."

A. W. Garber, engaged "during the last nine years in "the business of transferring passengers and baggage to "and from the various depots" in Richmond, and for that purpose having used a number of vehicles drawn by horses, on Broad street, "did *not*, during that period, find Broad "street a very unsafe place for vehicles drawn by horses," and "never had any accident in consequence of the use of "steam engines during that time, that he is aware of." See his deposition, p. 145, pr. record.

Ed. H. Chalkley, sergeant of police, "has been familiar "with Broad street for the last *twenty-nine years;* resided on "it, immediately opposite the Richmond, Fredericksburg "and Potomac railroad company's depot, for twenty-two "years; *policed Broad street for fully twenty five years or more.*" His opinion is, that "from Fifth street to Ninth the railroad "has been beneficial both to owners and occupiers of real "estate; that is, persons doing business on Broad street." He does "not think the railroad is *injurious to any part of* "*Broad street*, but that it is *more beneficial* to that portion "between Fifth and Ninth streets." He does "not believe "that any one shuns Broad street on account of the rail-"road, because he sees *as many vehicles and as many persons* "*on that street as upon Main street, where there is no railroad;* "and that accidents have occurred on Broad street, he be-"lieves, were caused more by carelessness of drivers than "by the railroad." And, although "he has policed Broad "street for twenty-five years or more, and has resided on it, "immediately opposite the railroad depot, for twenty-two "years"—"he has never seen, since he has been familiar "with Broad street, accidents occasioned by the locomotives "or cars of the defendants, by which persons have been "killed or seriously injured." See his deposition, p. 171 of printed record.

J. B. Kidd and J. V. L. McCreery, two merchants, one dealing in hardware and the other a grocer and commission business in which he uses a horse and vehicle, both of them

having stores on Broad street, opposite the Richmond, Fredericksburge and Potomac railroad depot, testify (pp. 136–'7 printed record) that: "Broad street has been very much "frequented by vehicles of various sorts drawn by horses; "that they have never witnessed or known of their own "knowledge any accidents occasioned by the use of the "steam engines of the railroad," although "a good many "country customers, who come into town in wagons, car- "riages and carts, drive up to their door, and sometimes "leave the horses standing there without drivers."

Conway R. Howard, civil engineer, testifies (pp. 138–'9 and 142 printed record) that, in the cities of New York, Jersey City, Camden, Newark, Philadelphia and Baltimore railroad trains, numbering from thirty to one hundred *per diem*, are drawn at a speed varying from five to fifteen miles per hour (instead of *three or four* miles per hour as in Broad street) over distances of from one to two miles or more through streets much narrower, more densely built up and thronged by people and vehicles, than Broad street; in one case penetrating to the heart of New York city near the city hall, or as was said by one of the judges in one of the cases before cited, "to the very vestibule of the courts of justice."

Such facts as these—and many more might be referred to—prove beyond doubt the absence of any necessity or reasonable occasion for the exercise, even by the state legislature if it had the constitutional power to do so, of any police power to deprive this railroad company of its chartered franchise to use locomotive engines in Broad street. If any additional evidence of this were needed it would be found in the very striking and conclusive facts exhibited in the city assessments of real estate for taxation found in the deposition of Mr. J. W. Anderson (pp. 168 to 170 of P. R.). These show (page 168) that during thirty-one years, from 1840 to 1871, the values of lots (omitting buildings or improvements) on that portion of Broad street in which this

railroad is located and used, have increased from *four to eight hundred per cent.;* that similar lots on Broad street east of 8th (p. 169), where there is no railroad, during the same period of time, have increased in value only from *two to five* hundred per cent.; that similar lots on *Main* street west of 8th have increased in value only from *two hundred and fifty* to *three hundred per cent.*, and on Franklin street west of 8th (including some of the most costly and fashionable private residences in the city), similar lots have, during the same period increased in value only from *two hundred and fifty* to *six hundred per cent.*

Now, while evidence the *reverse* of all this would not sustain the propriety of the prohibition, even by the state legislature, of locomotives on the railroad of the appellants—for no mere inconvenience, or *pecuniary* injury or loss, could justify the enactment by the legislature of such a measure, under the guise of exercising a *police power*—yet these facts, demonstrate beyond the possibility of a doubt, that there is not and cannot be, in Broad street, the danger to life, limb or property, which the appellees charge as existing there, or any which should even now induce the legislature, if this company's charter had never been enacted, to withhold from the people of the city, and of the whole state and country, the benefits resulting from the use of this important channel of trade and travel, in connection with the business portion of the city. For it is impossible to believe, that rational people would so eagerly seek for residences and places of business on this street, as to enhance the value of real estate on it much more rapidly than on almost any part of any other street in the city, if there were any such dangers attending their residing and carrying on business there.

It is true, that the depositions of a long array of witnesses have been taken, as to accidents which have occurred on Broad street, and which were occasioned, or were supposed to be occasioned, by the locomotives on the railroad. But

these accidents, numbering in *thirty-eight years* only *ten* serious ones, or about one in four years, are, in these depositions, treated like the moving phantoms of the magic lantern, or the mimic armies of a provincial theatre; where the same individuals are each made to personate many, by frequent passing across the stage. So, in many of these depositions will the same accidents be found repeatedly and frequently described, with the peculiar embellishments of the witness's bias or excited imagination. Even of this limited number, *four* were cases of boys who were improperly and illegally climbing on the cars in motion, (a practice so common, that it has been found necessary to prohibit it by a city ordinance, under a penalty on the parents or guardians;) and three were cases of persons old, infirm and deaf, who might have just as probably received the same injuries elsewhere, from any other vehicle. In the remaining three cases, there is strong reason to presume that the accidents were quite as much occasioned by the contributing negligence of the persons injured; and the witnesses examined, could not testify that they were not. If any of the extraordinary diligence which, in this case, has been exerted in canvassing the residents on Broad street for their accounts of accidents which, during nearly forty years, have occurred there, had been used in procuring like testimony of accidents which have occurred in any other principal street in the city by vehicles drawn by horses, it is believed that the latter would be found to be quite as numerous as the former during the same period of time.

The strong bias and prejudice of these witnesses, (many of them members of the so-called "Broad Street Association," the virtual prosecutors of the appellants,) and their very exaggerated statements as to the frequency of these accidents, and as to the consequent injury to the property and business on Broad street, contrasted with the remarkable modifications and retractions of those witnesses on more deliberate and careful reflection in their cross-examination,

cannot escape the observation of the court. A very large portion of their testimony is wholly irrelevant and inappropriate to this cause. For it relates to only *annoyances* and *inconveniences*, real or imaginary; or injuries to the value of real estate, or to the business conducted on Broad street. The latter have been overwhelmingly disproved, not only by the testimony of other witnesses, whose intelligence, disinterestedness and impartiality, are unimpeached and unimpeachable; but also by the records of the city government itself—where the city assessor's books shew that the real estate on that part of Broad street on which locomotives are used, has appreciated during thirty-one years of such use, in a ratio much greater than that in which the values of property in almost every other part of the city have increased.

But neither of these consequences of the use of locomotives on this railroad, if they were as real and greivous, as they are imaginary or comparatively slight, could suffice to justify even the *state legislature* in prohibiting that use heretofore authorized by their own grants and contracts.

In the case of the *Lexington and Ohio Company* v. *Applegate*, 8 Dana 289, it is decided, "that the fact, that a change in the modes of travel, &c., may have had an injurious effect on the business or rents in a street, is no cause for an injunction."

On page 302 of the same case, the court say: "Main "street in Louisville was established as a common highway "for the *universal public*, and as said in *Rex* v. *Russell*, 'The "right of the public is not confined to purposes of passage; "*trade and commerce* are the *chief* objects, and the right of "passage is chiefly subservient to those ends.' It must be "an extreme and anomalous case, in which an improved "mode of transportation, which not only facilitates passage, "but promotes *trade and commerce* in and through the city "of Louisville, could be deemed nevertheless a nuisance." And on page 304, "We will not presume, that the ordinary

"operations of a well regulated steam engine must neces-
"sarily be a nuisance in a city or town; and especially
"when, as in this case, we have facts and opinions of ob-
"servant men, conducing strongly to the conclusion, that
"a steam car in motion, on the street of a city is not, merely
"as such, a nuisance, public or private. * * * Railroads
"frequently cross other highways, are sometimes parallel
"with them, and always pass at some point, through a
"dense and travelling public.

"And, of course, wherever they may be—if steam en-
"gines be used upon them—persons travelling in stages
"private carriages, on horse or on foot, are subject to some
"annoyance, inconvenience, and hazard. Steamboats also
"are necessarily prejudicial to other boats; but a steam car
"on a railroad, or a steamboat on a river, is not, therefore,
per se, a public or private nuisance, and their prevalence
" and success only demonstrate their great utility and gene-
"ral popularity."

In the case of *Hentz* v. *Long Island R. R. Co.*, 13th Barb. 646, the supreme court of New York say: "There may be
"some danger to human life from the rapid motion of a rail-
"road train, but in the opinion of many not more so than
"would result from the passage of ordinary carriages. Ac-
"cidents to children or to adults who are not grossly careless,
"from locomotives when passing through our most popu-
"lous cities, *are* very rare. The times of their passage are
"generally known, and the noise made by the movement
"of the train and the engineer's whistle give timely notice
"of the train. When the usual precautions are practiced the
"danger is *very slight*." "Lives are sometimes destroyed by an omnibus, a carman's cart, a stage, or a steamboat, but so long as they are not uncommonly dangerous they cannot be prohibited. We cannot enjoy our private rights nor can we avail ourselves of the many advantages of modern discoveries without encountering some risk to ourselves or to our property, or to some extent endangering the lives or

injuring the property of others." "The only remaining question is whether the road where it passes the plaintiff's premises is a nuisance. I have already intimated an opinion that a railroad through a populous village or city is *not per se* a nuisance. The legislature has expressly authorized various companies to lay and use their track through many of our cities and villages, and cars are now (1852) drawn by locomotives propelled by steam through Albany, Schenectady, Utica, Syracuse, Rochester, Buffalo, Poughkeepsie, Brooklyn, Jamaica, and many other cities and villages. It was held in the case of *Drake* v. *Hudson River R. R. Co.*, 7 Barb. 508, that a road passing through the streets of the city of New York, and when cars are drawn by steam power into a crowded part of the city, was not a nuisance. See also *Hamilton* v. *New York and Harlem R. R. Co.*, 9 Paige, 171; *Chapman* v. *Albany and Schenectady R. R. Co.*, 10 Barb. 360."

In *Bell* v. *O. and Penn. R. R. Co.*, 1 Casey, 177, it was held that "Private interest and comfort must often yield to public necessity and convenience. This we apprehend must be the case here. If the company had the authority to make their road where it is, they are entitled to the ordinary and necessary uses and advantages of their position, and would not be answerable for any unavoidable annoyances or disturbance such uses might cause. To permit and encourage them to construct their road at a heavy expense, and then deny them the privilege of using it for the ordinary and necessary purposes of such a work would be inconsistent with every principle of justice and common sense."

In the *State* v. *Noyse*, 47 Maine Rep. 189, the court say (p. 213): "We have been unable to find in any of them (the authorities cited), the doctrine contended for, that legitimate police regulations will extend to matters conducive to the convenience of the public, *when they conflict with the recognized rights of other parties.*" "If convenience to

travellers on railroads will authorize the provisions under which this complaint is brought, it is not easy to perceive *any limit* to the power of the legislature in relation to its authority in the matters of police. * * * * But if railroads can be made subject to police regulations from which others are exempt, how far can this duty be extended? If the power exists to impose them in the slightest degree, we know of no line of limitation." "But if chartered rights may be impaired, and new duties imposed on a corporation, without compensation is effectually secured, with success, in contravention of stipulations in the charter, under the principle that it is merely the exercise of *police power* to promote public convenience, *it is a new and easy mode by which this constitutional security of private property and privileges may be broken down.*

In the case of the *Philadelphia, Wilmington and Baltimore R. R. Co.* v. *Bower*, decided in the court of errors and appeals of Delaware, and reported in the March number, 1874, of Am. Law Register, the court declares that "it is sufficient and quite safe to say, that an act having the effect to abridge or restrict any power or privilege vested by the charter, *which is material to the beneficial exercise of the franchise granted*, and which must be supposed to have entered into the consideration which induced the corporators to accept the charter and to assume the duties imposed by it, is such an alteration as the constitutional provision forbids, and that any act so operating is invalid." * * * * "The principle is, that *any material modification of the charter, or of the franchise or powers granted under it, is prohibited by the constitution.*" (The emphatic italics are used by the court.) * * * * "The police power of the State comprehends all those general laws of internal regulation which are necessary to secure the peace, good order, health and comfort of society. We are now concerned, not so much to discuss this power at large as to ascertain, with sufficient precision for the case before us, what is the proper limit of

the State police power in its bearing upon chartered rights and privileges, as these are protected by the constitution of the United States. It is not difficult to ascertain a rule sufficiently definite to be applied to cases, and one securing all interests involved—saving to the State, on the one hand, all needful authority for the legitimate purposes of police regulation, and yet, on the other hand, not trenching upon the constitutional protection of chartered rights. Such a rule would seem to be this: that the *Legislature* may at all times regulate the exercise of the corporate franchise by *general laws* passed in good faith for the legitimate ends contemplated by the State police power—that is, for the peace, good order, health, comfort and welfare of society, but that it cannot *under color of such laws*, destroy or *impair* the franchise itself, nor any of those *rights or powers* which are essential *to its beneficial exercise*. These acts regulating the mode of carriage of passengers with a view to *their* safety, or regulating the speed of travel through towns or cities, or prescribing certain precautions for the public safety at crossings, or requiring the erecting of fences, &c., &c., are proper exercises of the power of police regulations. Such acts leave the franchise unimpaired and simply regulate the exercise of it in some particulars plainly essential to the public safety, health or comfort of society. But quite different are acts which directly touch the constitution of the corporation, or *abridge or modify* any of those corporate powers which are essential to the very end of its creation; such powers, for example, as the right to operate a railroad at all, the right to take tolls, or fares and freights, or to adjust the tariff of such charges.

"These are *not police regulations*, but are, in substance and effect, *amendments of the charter;* and it is most obvious that if, *under color of the police power*, corporations may be thus dealt with, the constitutional provision, so solemnly adjudged by the supreme court to be a protection to their rights, is, after all, as to them, wholly nugatory."

In the case of *Thorpe* v. *The Rutland and Burlington Railway*, 27 Vermont 140, the court, in the course of an elaborate discussion by Chief Justice Redfield, of the general liability of corporations to legislative control, says: "It must be conceded that all which goes to the *constitution* of the corporation and its *beneficial operation* is granted by the legislature, and cannot be revoked, either directly or *indirectly*, without a violation of the grant, which is regarded as impairing the contract, and so prohibited by the United States constitution." Again they say: "The privilege of operating the road, or taking tolls or freight and fare, is the essential franchise conferred. Any act *essentially paralyzing this franchise or destroying the profit therefrom arising*, would no doubt be void. But beyond that, the entire power of legislative control resides in the legislature."

In the treatise on the subject of Constitutional Limitations, by Judge Cooley, p. 577, upon an extended and very satisfactory examination of this point, substantially the same limitation is drawn to the exercise of the police power as affecting chartered rights. The requisites to the valid exercise of the police power, the author holds to be these: "The regulations must have reference to the comfort, safety or welfare of society; THEY MUST NOT BE IN CONFLICT WITH ANY OF THE PROVISIONS OF THE CHARTER; and they must not, under pretense of regulation, take from the corporation *any of the essential rights and privileges* which the charter confers. In short, *they must* BE POLICE REGULATIONS IN FACT, *and not* AMENDMENTS OF THE CHARTER IN CURTAILMENT OF THE CORPORATE FRANCHISE. The maxim, *sic utere tuo ut alienum non laedas*, is that which lies at the foundation of the power, and to whatever enactment affecting the management and business of private corporations, it cannot fairly be applied, the power itself will not extend." The conclusion at which the court arrives in the case of the *P., W. & B. R. R. Co.* v. *Bower* is the following: "We are of opinion, that inasmuch as the act under consideration assumes the absolute power

to regulate and *control the exercise of a corporate right which was granted to this company as a part of its franchise*, without any reserved power of such future regulation by the legislature, *it is not a legitimate exercise of the State police power*, but is in substance and effect an alteration of the charter, and materially impairs the obligation of the contract, in the sense of the constitutional prohibition, as interpreted by the supreme court."

And the same principles are most strikingly illustrated and forcibly maintained in the opinions of the courts in the cases of *The Washington Bridge Co.* v. *State*, 18 Com. 53; *Bailey* v. *Philadelphia, &c. R. R. Co.*, 4 Harrington's Rep. 389; *Pingrey* v. *Washburne*, 1st Aiken's Rep. 268; *Miller* v. *N. Y. & Erie R. R. Co.*, 21st Barbour, 513; *People* v. *Jackson & M. P. R. R. Co.*, 9 Mich. Rep. 370, and *Benson* v. *The Mayor, &c.*, 10th Barbour 245, to which the special attention of the court is earnestly invited. The case chiefly relied on to sustain the exercise of such a "police power" as is usurped in these ordinances of the city council of Richmond, is the case of the *Buffalo & Niagara R. R. Co.* v. *The City of Buffalo*, 5th Hill N. Y., Rep. 209. But there is no analogy between that case and this; for the ground on which the exercise of the power is in that case expressly placed by the court, is that "there can be *no serious question* "about the power of the legislature to *alter at pleasure* the "several *acts incorporating the parties to this suit*, as the right "to do so is *distinctly declared* by general statute and is *spe-* "*cifically reserved* in *each of the charters*;" whereas neither in the charter of the plaintiffs in error, nor in any antecedent general statute of Virginia is there any such reservation of power to alter or amend their charter in any respect! So in the case of the *Commonwealth* v. *Alger*, cited by the judge delivering the opinion of the court of appeals of Virginia; there was in the original grant of the franchise an express reservation to the legislature, of "the right to impose such "restraints and limitations of the proprietor's use as the

"legislature" "may see fit to impose for the protection of "public and private rights." And so, in nearly every case cited to sustain the exercise of this power, similar distinctions from the case at bar will be found.

This theory of "police powers," inherent in governments irrespectively of written constitutions, as contended for during the last few years by some recent writers, and sanctioned in a few cases decided by the courts of some of the States, is in its nature so vague and indefinite, and in its scope so unlimited, that its prevalence cannot fail to excite in every reflecting mind, capable of appreciating the value of constitutional liberty, the gravest apprehensions. The great, learned and wise men, who framed our State and Federal constitutions, fully appreciated the vital importance of defining and limiting, so far as was practicable, the powers of the legislative as well as of the other departments of government; for history had taught them, that in no other department of government were usurpations of power so much to be apprehended as in this, with its sub-divided responsibility, and liability to be swayed by passion and prejudice. Hence the care with which they provided for the rights of minorities, and for private and individual rights, those muniments against legislative injustice and oppression, which are prominent in those constitutions and in our Bills of Rights. And if this care was needed in those days of conservative ideas of government, and of limited suffrage, how much more necessary is it now, when the powers of government may be wielded not only in the elective franchise, but in the actual function of legislation by any adult male bearing the human form, however ignorant, degraded and without interest in the welfare of the governed. And yet these "new lights" of the law, have of late discovered, and desire to establish in this country, so beset with the perils of arbitrary power exercised in the name of law, a "higher law," above and paramount to all written constitutions and bills of rights, undefined and unlimited in its

authority and jurisdiction, which they call the essential "police power" of all governments, and which they found upon that maxim so general and vague in its terms, that in England, and heretofore in America, it has always been *subordinated* to the constitution and common law, "*Salus populi suprema lex.*" Such were the ideas which prevailed in France at the close of the last century. Let her experience teach us to beware of them!

Appealing to this "higher law," and to this much perverted maxim, they would absolve all legislative bodies from every restraint either of written constitutions, of the principles of justice and morals, or of the obligation of contracts, if at the moment, such legislatures, however incompetent or corrupt, or swayed by passion, deem or declare such restraints to be in conflict with *their* conception of the "*salus populi*," leaving every right of property or personal liberty at the mercy of an uncontrollable and ruthless majority.

And yet in nothing is the true "*salus populi*" more deeply involved—nothing is more essential to its preservation than good faith and fidelity to the "obligation of contracts" in legislation. Without these all rights of property or of person become unsettled and insecure. Mistrust and fear take the place of peace and confidence in law and government. Society itself becomes gradually but surely disorganized and disintegrated, until each individual, for the protection of his natural rights, finds himself remitted to the means of defence which the laws of the land do not afford; leaving to him no alternative but resistance by force or servile submission to the intolerable oppressions of anarchy.

Such being the inevitable tendency of these loose ideas of the "police powers" of government, great are both the privilege and the responsibility of the judicial department of our governments, to arrest and restrain, within the limits of constitutional law and liberty, the exercise of such dan-

gerous powers. To do this *now*, before its encroachments have been strengthened by precedents, is easy. This opportunity neglected, the time may come when the overflowing ripple, which a child's hand might have stayed with a clod, may become a resistless flood, sweeping away all barriers, together with those who vainly strive to strengthen them.

If such be the dangers of this loose exercise of these police powers, even by *state legislatures*, and such the necessity of restricting its exercise even by them, how much more vigilantly and strictly should such restrictions be maintained upon the legislation of mere municipal corporations, the subordinate creatures of the state legislature, having no lawful powers but those which have been expressly delegated to them by the legislature creating them.

For members of such municipal legislatures, the field of selection is more limited; their election is more subject to be controlled by the passions of popular excitements in crowded cities; their personal responsibility is far less; and consequently the dignity and authority of such bodies are far less than those of state legislatures. Their legislation, also, is far more apt to unnecessarily harass and oppress the citizen, and often to conflict with the constitution, or with the laws of the state.

For these and other reasons, which have prevailed both in England and America, the courts have construed the powers of such municipal legislatures *strictly*, and not *liberally*, as contended for by the circuit court judge in this case. 2d Kyd on Corporations, pp. 104–7; Cooley on Const. Lim. pp. 194–5, and cases there cited in notes.

In the words of that judge and author, "The general dis-"position of courts in this country, has been to confine "municipalities within the limits that a *strict* construction "of the grants of powers in their charters will assign to "them: thus applying substantially the same rule that is "applied to charters of private corporations."

In the case of *Rochester* v. *Collins*, 12th Barb. 559, it was held, that the power in a municipal corporation to enact ordinances to abate and remove nuisances, will not authorize the passage of an ordinance to *prevent* nuisances, or impose penalties for the creation thereof. In the case of *Grand Rapids* v. *Hughes*, 15 Mich. 54, it was decided, that a power in a municipal corporation to impose penalties for obstructions to streets, would not authorize the like penalties for *encroachments* upon streets, where, under the general laws of the state, these offences are recognized as different and distinct.

And the same principle is maintained in the cases already cited of *Commonwealth* v. *Erie and N. E. R. R. Co.*, 27 Penn. St. R., 339; and of *New Jersey R. R. Co.* v. *Jersey City*, 29 N. J. Rep. (5th Dutcher,) 170, as well as in many others, which it is unnecessary to cite.

2. To the contract between the state and the company the council on the 23d of December, 1834, so far as it was then empowered to act in the matter (*Mercer, &c.* v. *Pittsburg, Ft. Wayne and Chicago R. Co.*, 12 Casey, 99) gave effect by the resolution of that date, whereby (pr. record pp. 27, 28) it approved "the location of the said railroad and "the present termination of the same" in Broad street from its intersection with Eighth street, as "proposed by the res-"olution" of the directory of the railroad company, that the approval by the council was without the expression of any objection to the use of steam engines on any part of the railroad, on the *whole* of which, without exception of any portion, their use was expressly authorized by the legislature. Such is the case although the use intended was suggested to the minds of the council by the then actual use of such engines in other and neighboring cities in this as well as in other states. The enquiry addressed by the council (in their resolution passed in February, 1836) to the directory of the railroad company, as to "what are to be "their future plans and operations, so far as they relate to

"travel on said road on H" (now "Broad") street (printed record, p. 28), produced the prompt reply of the directory of the railroad company (printed record pp. 31–'32) that "the railroad having been made along H street from a point "approved by the common council, the president and direc- "tors *under power given by the act of incorporation* have pur- "chased and *placed on the railroad a locomotive engine* and "other machines proper for the purposes of transportation, "that their plan, so far as relates to travel on said road *on* "*H street*, is to have the cars *drawn by a locomotive;* that it "had occurred to them that it might not be prudent *for the* "*locomotive* to go so fast *within the corporation* as it will after "leaving the city; and accordingly they had adopted a reso- "lution directing their engineer not to suffer the *locomotive* "*while in the city* to proceed at a rate exceeding three miles per "hour." The subsequent action of the city council on the 30th of March, 1836 (pr. record, p. 28) was in accordance with, and in effect approved and adopted the recommendation of their committee, to whom *this* subject had been referred, and who recommended (pr. record, p. 33) "*as a* "*compromise of interests*" a plan for the paving and improving H street, of the cost of which they say the railroad company "liberally proposed" to pay, as they did afterwards pay, one-third, amounting to over $7,000. Thereby the right of the company under the contract between the state and the company was confirmed and strengthened. *State* v. *Noyes*, 47 Maine, 205. There was now not only a contract with the railroad company by and under a law of the state, but a complete and executed contract with the railroad company by the city, whereby the city is precluded and estopped (7 Rob. Prac. tit. 2, § 4, p. 247; ib. p. 26, p. 430 *et seq.*) from preventing or attempting to prevent the use of locomotive engines on the railroad in "H"—now Broad street—what has been done by and under the ordinances passed by the city council in 1872 and 1873 (pr. record pp. 25, 26), impair the obligation of those contracts and is in

violation of the first clause of the tenth section of the first article of the constitution of the United States.

3. These ordinances of the city council of Richmond are unconstitutional and void, because assuming to act under authority of the state, the council in them "deny" to the plaintiffs in error that "equal protection of the laws" guaranteed to them in the fourteenth amendment of the constitution of the United States.

The evidence in this cause discloses the following undisputed facts (see deposition of C. R. Howard, p. 137, 140, 141, 142 answers to questions, 2, 3, to questions 1 of cross-examination, and question 2 of re-examination, questions 12th and 22d re-examination, of record), that on four other railroads entering the city of Richmond, extending along some of its streets and crossing others, steam engines are daily used, with the assent of the city government; that one of these four railroads (the Richmond and Danville railroad) not only crosses some of the narrowest and most densely thronged business streets of the city, but passes for a long distance along Dock street, a part of which is only fifty feet wide, and which is constantly crowded with wagons, drays, coaches and other vehicles conveying all the freights and passengers carried in all the steam and sailing vessels between Richmond and all other points accessible by water. That another of these railroads (the Chesapeake and Ohio railroad) after passing along a narrow and crooked street, a portion of it closely built up, for a considerable distance, actually *crosses this same Broad street*, at a point towards which this street is in both directions *a long and steep descent*, and at which drivers of vehicles approaching it in either direction cannot see the locomotives and trains, very frequently, so crossing their course, before they come within fifty yards of them! And yet, although against none of these railroads is any ordinance enacted, prohibiting this *really dangerous* use of steam engines at *these* points, they *are* enacted, and attempted to be enforced, *exclusively* against the railroad of

the appellants, which, it is proved, extends along a level, straight street, one hundred and twenty feet wide (nearly double the width of any other street in the city), where the engine and train can be seen when more than a mile distant. Nor is there any reason assigned or pretended for this unprecedented and unreasonable discrimination; for the reasons for passing these ordinances, recited in the preamble to one of them, apply with tenfold greater force to these other railroads. What reason *could* be assigned justifying such an ordinance? To call such an arbitrary exercise of mere power a *law* or act of *legislation*, is an abuse of terms. A *law*, statute or ordinance is a rule of conduct prescribed by the legislature indiscriminately for *all* citizens, or for *all alike* of those in the same category or class. It is not, like these ordinances, a mere *proscriptive edict*, against *one* individual in the state or in the same class, prohibiting that *one*, under heavy penalties, from doing that which all others, although in the *same class*, and in the same circumstances, may do to a much greater extent with impunity. An ordinance reciting the unquestionable fact, that the difficulty of stopping a train of cars, even if drawn by horses, and the consequent dangers of accidents to persons and vehicles passing in the streets is exactly proportionate to the number of such cars so drawn and their weight, and, therefore, prohibiting under heavy penalties on *one* of the five railroads entering the city (although in a level, wide and straight street), the drawing in one train of more than a prescribed number or weight of cars, while on all the other four railroads (in crooked, uneven and much narrower streets,)an *unlimited* number and weight of cars in one train were permitted to be drawn, would scarcely be deemed any more worthy of the designation of a "law" or ordinance than one reciting the equally indisputable fact, that accidents have been caused in the streets of cities by wagons or hackney coaches drawn by horses, and therefore prohibiting *one* particular owner, among many others, of such wagons

or hackney coaches, from having his vehicles drawn in the streets by horses or any animal more active than oxen. And yet neither of these supposed acts of so-called legislation would be more repugnant to natural reason and justice than these ordinances enacted *exclusively* against the appellants' railroad.

Even if such a so-called law had been enacted under the same circumstances, by the *legislature of the state*, its validity might well have been doubted, if not denied, by the courts. The authority of the British Parliament, unlike that of any state legislature, extending to the alteration of the constitution or fundamental law of the state, has yet its limits in the principles of natural "right and reason." In the language of Lord Coke in Dr. Bonham's case (Coke's Reports, part VII): "It appears in our books that in many "cases the Common Law will control Acts of Parliament "and sometimes adjudge them to be utterly void. For "when an act of Parliament *is against common right and rea-* "*son*, or repugnant, or impossible to be performed, the Com- "mon Law will control it and adjudge such act to be "void."

In this country, in the language of Chief Justice Marshall in the leading case of *Fletcher* v. *Peck*, 6 Cranch 135: "It is the province of the legislature to prescribe *general* "rules for the government of society." * * "And "it may well be doubted whether the *nature of society and* "*government* does not prescribe *some limits* to the legislative "power."

In the case of *Calder* v. *Bull*, 3 Dallas 388, Chase, Justice, says: "I cannot subscribe to the omnipotence of a "state legislature, or that it is absolute and without con- "trol, although its authority *should not be expressly restrained* "*by the constitution or fundamental law of the state.* * * "The nature and ends of legislative power will limit the "exercise of it." * * "An act of the legislature "(for *I cannot call it a law*) contrary to the great first princi-

"ples of the social compact" (and there can be none greater than that which requires all *laws* to be impartial, uniform, indiscriminating), "cannot be considered a rightful exercise "of legislative authority. * * "It is *against rea-* "*son* and justice for a people to entrust a legislature with "such powers, and therefore it cannot be presumed *that* "*they have done it.*" The genius, nature and the spirit of "our governments *amount to a prohibition* of such acts of le- "gislation, and the general principles of law and reason "forbid them." * * "To maintain that our Fed- "eral or state legislature possesses such powers, if they had "not been *expressly* restrained, would in my opinion be a "political heresy altogether inadmissible in our free repub- "lican governments."

These are the judicial views of some of the founders of our government and creators of its judicial system; and if they were deemed essential for the protection of private right and liberty in those days of limited suffrage and conservative forms and traditions of government, how much more necessary are they *now*, when universal suffrage, and frequent and popular elections for every office are rapidly removing every hindrance to the unlimited, despotic sway, without sense of personal responsibility, of popular majorities controlled by excitement or corruption, manifested in hasty, reckless, ignorant and tyrannous acts of so-called legislation. In later times we find the same principles recognized in the case of *Booth* v. *Woodberry* 32d Connecticut Reports 127, where the court expressly held that the legislature can pass no law "contrary to the principles of natural "justice." See also the cases of *Lin Sing* v. *Washburn*, 20 Cal. 578; *Holden* v. *James*, 11 Mass. 396; *Davison* v. *Johonot*, 7 Met. 393; *Bull* v. *Conroe*, 13 Wis. 238, 244. The ruling in these and other like decisions does not, as is sometimes argued, undertake to limit or control the discretion of the legislature in the exercise of its legitimate functions. It merely declares, that such acts of legislative bodies are

not acts of *legislation* at all; but mere exercises of power, in disregard and violation of those fundamental principles of natural right and reason, which are essential to all legitimate legislation—as much so as if the legislative body should usurp and assume to exercise powers purely judicial or executive. Indeed, to proscribe one individual and deprive him, without any special reason for doing so, of the benefit of the general laws of the land, enjoyed by every other individual in the state, or in his class or category, *is* to judicially condemn him without a trial, as much so as to enact against him a bill of attainder or of outlawry.

Justice Cooley, in his work on Constitutional Limitations, uses the following language, on page 390: "A statute would "not be constitutional which should proscribe a class or "party for opinion's sake, or which *should select particular* "*individuals from a class or locality*, and subject them to pecu- "liar rules, or impose upon them special obligations or bur- "thens, *from which others in the same class or locality are exempt.* "The legislature may suspend the operation of the general "laws of the State; but when it does so, the suspension "*must be general*, and cannot be made for *individual* cases, or "for particular localities." * * * "Every one "has a right to demand that he be governed by *general* rules, "and a special statute which, without his consent, singles "his case out as one to be regulated by a *different law from* "*that which is applied in all similar cases*, would *not be legitimate* "*legislation*, but would be such an arbitrary mandate as is "not within the province of free governments." "'Those "who make the laws are,' (in the language of Locke on Civil "Government, sec. 142,) 'to govern by promulgated, estab- "lished laws; not to be varied in particular cases, but to "have one rule for rich and poor, for the favorite at court, "and the countryman at the plough.'" "This is a maxim "in constitutional law, and by it we may *test the authority* "*and binding force* of legislative enactments."

To understand the sense in which the word "*constitutional*"

is here used by Judge Cooley, we must refer to what he says on the preceding page: "We speak now in refer-"ence to *general* constitutional principles, and not to any "peculiar rule which may have become established by "special provisions in the constitutions of individual "States."

In *Lewis* v. *Webb*, 3 Greenleaf, 326, the validity of a statute granting an appeal from a decree of the probate court in a particular case came under review. The court say: "On principle it can never be within the bounds of *legitimate legislation* to enact a special law, or pass a resolve dispensing with the general law in a *particular case* and granting a privilege and indulgence to one man by way of exemption from the operation and effect of such general law, leaving all other persons under its operation. Such a law is neither just nor reasonable in its consequences. It is our boast that we live under a government of laws and not of men; but this can hardly be deemed a blessing unless those laws have for their immovable basis the *great principles of constitutional* EQUALITY. Can it be supposed for a moment that if the legislature should pass a general law and add a section by way of proviso, that it never should be construed to have any operation or effect upon the persons, rights or privileges of Archelaus Lewis or John Gordon, such a proviso would receive the *sanction* or even the *countenance of a court of law?*"

In *Walley's heirs* v. *Kennedy*, 2 Yerg. 554, it is said: "The rights of every individual must stand or fall by the *same rule or law* that governs *every other member of the body politic* or land *under similar circumstances*, and every partial or private law which directly proposes to destroy or affect *individual rights* is unconstitutional and void. Were it otherwise, odious individuals and corporations would be governed by one law; the mass of the community and those who made the law by another; whereas the like general law affecting the whole community equally could not have been passed."

(How peculiarly applicable to the facts of this case is the language of this decision!)

If these then are the fundamental principles which must limit and control the action of the *supreme legislature* of the state, with how much greater force do they apply to the action of a mere municipal corporation created by and existing only at the pleasure of the legislature, and having no legislative authority, except what is clearly delegated to it by the legislature of the state, which cannot be assumed to have or even attempted to have delegated authority which it did not itself possess.

It was for the purpose of preventing just such unequal, discriminating and tyrannous exercise of power as is here witnessed in the case of the plaintiffs in error who, among five or six railroad companies using locomotives in the city, are singled out as the victims of hostile and prohibitory legislation, there was adopted that part of the XIV amendmendment to the constitution of the United States, which declares that, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deny to any person within its jurisdiction the equal protection of the laws."

Moreover said ordinances are in violation of that part of said fourteenth amendment which prohibits deprivation of *property* without due process of law. The state, by its act of February 25, 1834, granted to the railroad company (in § 1, p. 14 of P. R.) the right and power of "providing everything necessary and convenient for the purpose of transportation on the" railroad from the "point within the corporation of Richmond," approved by the common council, to a point within the corporation of Fredericksburg, and thence to the Potomac river or a creek thereof; and besides that general right and power granted (in § 24 p. 21 of P. R.) "power to purchase" and "place on the railroad, constructed by them under this act," (whether within

or without the city,) "*machines*, wagons, vehicles," &c. This is not a limited power to place on the railroad such *machines*, vehicles, &c., as may be approved by the common council; for as to this, the legislature did not require an application to the council for their approbation or for an exercise of their discretion. But the power is conferred on the president and directors, or a majority of them, and is broad and general to place on the railroad "all *machines*, wagons, vehicles, carriages and teams of any description whatsoever *which they may deem necessary or proper* for the purposes of transportation;" and included necessarily the power to place thereon such steam engines or locomotives as the president and directors deemed necessary or proper. The words of the clause, "clearly give to the company the *unqualified* authority to use" such *machines*, &c., on any part of the railroad from the point within the corporation of Richmond approved by the council to the point of termination. *The King* v. *Pease, &c.*, 1 Nev. & Man. 694, 4 Barn. & Adol. 30, 24 Eng. C. L; recognized and acted upon by the Exchequer Chamber in 1860 in *Vaughan* v. *Taff Vale Railway Co.*, 5 H. & N. (Excheq.) 679, and by the House of Lords in 1869 in *Hammersmith &c., Railway Co.* v. *Bland*, L. R. pp. 758, 759 of Vol. 4 Am. ed. of Q. B., and p. — of Eng. ed. of Eng. & Irish Appeals. We have then, in the language of the English judges, the case that "the railway is a legalized highway"—"made under the authority of the legislature;"—the case that the legislature has "authorized the construction of that highway," and "the use of locomotives on it." Such use is one of the privileges or franchises granted by the state to the company. *Cleveland and Pittsburg R. R. Co.* v. *Speer*, 6 P. F. Smith (56 Penn.) 325. It is a privilege or franchise which is not only "beneficial," but essential and important to the use and enjoyment of other franchises of the company; of which the city cannot lawfully deprive the company on the mere pretext of promoting thereby the better use by the public of Broad

street. Such privilege or franchise could not be changed or impaired by requiring "of this company a duty which is not expressly enjoined by the charter, and prescribing a fine for the omission to comply; thus making the omission a crime." *State* v. *Noyes*, 47 Maine 208. And it would seem still more clear that the same cannot be changed or impaired by prohibiting the company from doing an act which is expressly allowed by its charter, and prescribing a fine for non-compliance with such prohibition; thus making a crime of that which is allowed the company by its charter and by the contract with it.

The privilege or franchise in question is the *property* of the company; and cannot lawfully be impaired without just compensation. *State* v. *Noyes*, 47 Maine 205, 206. This company is entitled to the benefit of the principle judicially declared as to private corporations, that they are not to be affected by an act passed for the sole purpose of promoting the convenience of "the public generally, or any citizen or classes of citizens, in contravention of provisions in the charters of such private corporations respectively, unless it is by the constitutional provision of taking private property for public uses, and upon compensation therefor." S. C., 47 Maine 211, 213, 216.

That what has been done, or attempted, is "*without due process of law*," is further supported by what appears in P. R., p. 4, and in the statement *ante* p. 6, that the proceedings objected to as in violation of the constitution are "not mere resolutions of the council of the city expressive of an opinion against the rights which the railroad company distinctly claimed in 1836, and no less distinctly insisted upon in 1838; not mere resolutions for judicial proceedings to determine the validity of the rights so claimed and insisted upon, or to ascertain whether there exists good cause for restraining the farther exercise of these rights; but proceedings in the form of an ordinance or by-law, passed by one party to this controversy (P. R., pp. 25, 26), and enforced

by officers compensated by that same party for their official services." "Such a power can never be assumed or exercised, when the law forms any protection for the rights of the citizens; nor under any government less absolute than a naked despotism." *Boone* v. *City of Utica*, 2 Barb., 110. In 1852 it was a question whether the common council of the city of Syracuse, "in the exercise of their municipal powers, have the right, without trial or notice to the party interested, to destroy a large and valuable property, under the pretence that the property is a nuisance." The council, having declared certain premises to be a nuisance and directed an abatement, claimed that what they so declared was an adjudication upon the question of nuisance, and was final against the owners of the property. The supreme court of New York said: "Inasmuch as this claim is one of great interest to dwellers in our cities, and may, if well founded, result in the destruction of vast amounts of property at the whim or caprice of an irresponsible common council, it should not be sanctioned unless clearly granted; it should not be applied by implication." *Clark* v. *Mayor, &c., of Syracuse*, 13 Barbour 34, 35. The court then say:

"It is worthy of remark that none of the safeguards are thrown around the exercise of this power, if it exists, which are usually deemed necessary to protect the property of the citizen. The property holder is not entitled to any notice of the proceedings in which he may be so vitally interested. The fact upon which property is to be condemned and destroyed, is not to be found by jury, and upon the examination of witnesses in the presence of the parties, but may be adjudged upon the view of the members of the common council, or perhaps a bare quorum of that body, or even some smaller number, in the absence of the owner and possibly with the aid of some persons interested adversely to him. No provision is made for compensating the owner for the sacrifice of his property for the public benefit." S. C., 13 Barbour 35.

Distinguishing the case from a conviction on indictment, the court say:

"It must be conceded that the city government is of limited authority, and can

only exercise those powers expressly delegated to it, or necessarily incident to such powers. The first difficulty in the case is a want of authority in the defendants, under their charter, to do the act threatened." S. C., 13 Barbour 37.

"It is quite evident that the premises of the plaintiffs have recently, if at all, become obnoxious, *after their occupation for a quarter of a century*, by reason of the great change which had taken place in the surrounding premises; and that the growth and growing wants of a large city have rendered that a nuisance which was innocuous and probably a public benefit when first created. It is not probable that the legislature designed to confer the power to destroy property so valuable as this, and thus situated, without compensation." S. C., 13 Barbour 39.

"There appears to be no necessity for the exercise of this power by the common council." *Ibid.*

For the foregoing reasons it is respectfully submitted, that there was error in the judgment of the supreme court of appeals of Virginia deciding in favor of the validity of the ordinances of the city of Richmond, passed September 8th, 1873, under an alleged authority claimed to be derived from the state of Virginia, and against the right, title, privilege and immunity claimed by the plaintiffs in error under the constitution of the United States; and that because of such error that judgment should be re-examined and reversed by the supreme court of the United States.

P. V. DANIEL, JR.,
with
CONWAY ROBINSON,
Counsel for Plaintiffs in Error.

Supreme Court of the United States.

NO. 150.

The Richmond, Fredericksburg, & Potomac Railroad Company,
Plaintiff in Error.

against

The City of Richmond,
Defendant in Error.

WRIT OF ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

Conway Robinson,
WITH
P. V. Daniel, Jr.,
For Plaintiff in Error.

December, 1877.

R. O. Polkinhorn, Printer, 632 and 634 D Street, Washington, D. C.

Supreme Court of the U. S.

THE RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY, *Plaintiff in Error,*
against.
THE CITY OF RICHMOND,
Defendant in Error.

No. 150.

Writ of Error to the Supreme Court of Appeals of the State of Virginia.

Mr. *Daniel* filed in November a statement of the case, an assignment of the three errors relied upon, and a brief of the argument, whereby upon the first two of those errors he shewed that under the act of February 25, 1834, incorporating the stockholders of the Richmond, Fredericksburg and Potomac Railroad Company (Pr. Rec. p. 13, *et seq.*), the company had made a railroad from a point within the corporation of Richmond, proposed by a resolution of December, 22, 1834 (Pr. R., p. 24), and "approved by the common council" by a resolution of the 23d of that month (Pr. R., pp. 27, 28), and that *the president and directors* are by the 24th section of that act (Pr. R., p. 21) empowered to place on the railroad "all *machines*, wagons, vehicles," &c., "*which they may deem necessary* or proper for the purposes of transportation;" and shewed also the proceedings in 1836 of the council and the company (p. 28), and the then *compromise* as set forth p. 30 to 36 and pp. 58, 59; and shewed also

the opinions given in writing by counsel as to "the legal right" of the company (p. 51 to 55); and that upon the railroad in the city, engines were propelled by steam from 1836, when transportation on it commenced, until, under colour of a law of the State providing for a charter for the city, approved May 24, 1870,* the city counsel passed the ordinance of September 8, 1873, p. 26 of Pr. R.; and shewed that the law of May 24, 1870, passed by the State, does, according to the construction insisted upon by the city council and given to it by the highest court of the State, impair the obligation of contracts made with the company by the State and by the city.

The rapid progress which this court was making in the call of its docket when Mr. *Daniel* was preparing his brief, had the effect of hurrying him to file it, and preventing him from making the argument (p. 48, *et seq.*) on the third error assigned, so full and forcible as he desired. I received from him on the 5th inst. a copy of the brief of the attorney for the city in the court below, which, besides citing cases referred to by that court (Pr. R., p. 195 to 199), relies on the opinion in 1794 in *Zylstra* vs. *Corporation of Charleston*, 1 Bay., 382, of "Mr. Justice *Watts*, one of the ablest of early American judges," and upon *Wynhamer* vs. *The People*, 13 N. Y., 402–451, wherein, as to fundamental principles, there is a very full citation of previous cases. The following observations on the third error assigned, notice these two cases and others referred to therein, or in the opinion of the court below.

* In section 19, prescribing the powers of the city council, the 10th clause (p. 125 of Acts of 1869, 1870) is as follows: "To determine and designate the route and grade of any railroad to be laid in said city, and to restrain and regulate the rate of speed of locomotives, engines, and cars upon the railroads within the said city, and may wholly exclude the said engines and cars, if they please, provided no contract be thereby violated."

As to the case of *Buffalo & Niagara Falls R. R. Co.* vs. *City of Buffalo*, 5 Hill, 209, cited in that opinion (p. 196 of Pr. R.), it is to be observed that in that case, *Nelson*, C. J., begins his opinion, p. 210, by saying: "There can be no serious question in this case, about the power of the Legislature to modify and alter, at pleasure, the several acts incorporating the parties to this suit, as the right to do so is distinctly declared by a general statute (1 R. S., 603, § 8, 2d Ed.), and is also specifically reserved in each of the charters (Sess. Laws of 1832, p. 319, § 67; Sess. Laws of 1834, p. 481, § 26)." This does not apply to the railroad company incorporated by the act of Virginia of February 25, 1834. There is no such reservation in its charter; and the provisions in the code of Virginia, ch. 61, § 1 and § 34, pp. 316 and 322 of Edi. 1849, only apply to a railroad company governed by the act of March 11, 1837, prescribing general regulations for the incorporation of railroad companies, or to a company incorporated after the enactment of that act.

As to the general police powers of a State, such reference as is made, p. 195, by the court below to the *City of New York*, vs. *Miln*, 11 Peters, 139, might also have been made to *The license cases*, 5 How., 504; these cases deciding only that certain laws in question therein did not conflict with the power of Congress to "regulate commerce with foreign nations and among the several States."

Loose language of some of the so-called text books, or elementary writers, is relied upon by the court below in support of the position (p. 195) "that under the general police power, inherent in every municipal corporation," "the city council might well exercise" authority to pass such an ordinance as that now in question. To this it may at once be answered that a law or ordinance in conflict with the Constitution of the United States,—the supreme law of the land,—is no less void when passed in the

name of police powers, or under those powers, than when passed in any other name or under any other power.

"What are the police powers of a State? They are nothing more or less than the powers of government inherent in everysovereignty to the extent of its dominions; and whether a State passes a quarantine law or a law to punish offences, or to establish courts of justice, or requiring certain instruments to be recorded, or to regulate commerce within its own limits, in every case it exercises the same power: that is to say the power of sovereignty—the power to govern men and things within the limits of its dominion. It is by virtue of this power that it legislates: and *its authority to make regulations of commerce is as absolute as its powers to pass health laws, except so far as it has been restricted by the Constitution of the United States.*" *Taney*, C. J., in the *License Cases*, 5 How., 583.

The question as to the validity of the ordinance of September 8, 1873, (p. 26) should be determined independently of *any opinion of the city council* as to its police powers. What has occurred from time to time during about forty years manifests the impropriety of the city council making itself the judge of the matter in controversy. In consequence of a petition to the council from some citizens, a committee of the railroad company examined into the rights of the railroad company, and on the 22d of October, 1838, made a report (p. 30 to 36) declaring, on p. 36, that "the right given by its charter, the expense which it encountered in building and fitting up its depot after the Hall approved the termination, and the understanding at the time this company agreed to bear so large a share of the expense of paving H street, combined together, create rights which cannot *lawfully* be divested." This report, making known the nature of those rights, is mentioned in the deposition pp. 58, 59. It was approved by the board, transmitted to the council, and published in the newspapers of the city (p. 36.) In a committee of three appointed by the council, two agreed on the report, p. 36,

in the latter part whereof, on p. 43, are the words "Neither do we, nor could we, impute to the present upright and intelligent directory of that company wilful or improper designs against the right of the city. They have boldly and honestly expressed their views, from which we as boldly and honestly dissent." This report concluded with resolutions, the fifth whereof was for prohibiting, by ordinance, the introduction of locomotive steam engines within the city, upon the railroad after the expiration of six months. This report and resolution were not adopted: but the council adopted a substitute, whereby it was resolved (p. 47) "that it is *not* expedient, at this time, to prohibit the introduction of locomotive steam engines within the limits of the city." In 1845, on another petition there were majority and minority reports: and on motion of Mr. *Wickham*,* the council adopted the substitute, p. 48. In 1853 and 1854, there were petitions and counter petitions, (p. 49), and a report and a substitute, which, after 'a tie vote—six to six,' were laid on the table, (pp. 49, 50.) Afterwards, the matter rested for about sixteen years. In 1870, the council, by its resolution, p. 50, required its counsel to make an investigation and report as to the "legal right" of the company. The opinions of counsel as to the company's 'legal right' are p. 50 to 55. In March, 1871, the council adopted a resolution looking to a purchase from the company. To a note of the 25th of that month from the chairman of a committee, the president of the railroad company made a reply of the 27th (p. 10.) On the 18th of April, 1871, the correspondence was laid before the board. Their proceedings were on the next day communicated to the chairman of the committee of the

* One reading the opinion of the court, p. 192, might suppose this was the distinguished lawyer, *John Wickham*: but he was never in the council, and was dead before November, 1845. It was his son, *James M. Wickham*, who was then a member of the council.

council, together with a letter of the same date (April 19, 1871,) from the president of the railroad company, (pp. 10, 11.) Next there was a resolution of the council prohibiting the use of locomotive engines on the company's roadway. This was laid before the board of directors of the railroad company on the 17th of May, 1871. After full consideration thereof, it was, on the 27th of that month, resolved (p. 12) as follows:

1. "That in the judgment of the board of directors of this company, and of the legal counsel of this company, the legal and equitable right of this company to use locomotive engines on its roadway in Broad street, so long as it shall be convenient to it to do so, given in its charter by the supreme Legislature of the State, is complete, and cannot lawfully or justly be divested or restricted by any action of the Council of the city of Richmond.

2. "That this board respectfully suggest to the Council of the city of Richmond that if, in their judgment, or in that of the legal counsel of the city, there be any good reason for denying or questioning this right, it is a question which may be most properly decided by the courts, before whom, if pressed, it must inevitably be brought, and to whose judgment upon it this company therefore invites an appeal.

3. "That if by any reasonable change of the grade of this company's roadway through any portion of Broad street, by a sale to the city of this company's real estate on Broad street, near Eighth street, at its assessed value, or by any other measure which is reasonable and not violative of this company's rights and interests, any supposed objections to its use, with locomotives, of its roadway in Broad street, can be obviated or removed, this board will be ever ready to give to any proposition or suggestion from the Council of the city, made for that purpose, the most respectful consideration, with a sincere desire to remove all just cause of complaint."

That there were citizens who desired to arrive at a just and proper conclusion, "without doing injustice to any party interested," may be inferred from the communication of Sept., 1871, referred, on the 18th of that month, to a special committee. (p. 9.) To that committee the president of the company made the communication of the 6th of October, 1871, (pp. 12 and 13); and thereupon Mr. Chesterman, the chairman of that committee, made the report. (p. 10.) Nevertheless, the City

Council passed, on the 13th of May, 1872, the ordinance (pp. 25, 26), the third section whereof is as follows:

"That on and after the first day of January, 1874, no car, engine, carriage, or other vehicle of any kind belonging to or used by the Richmond, Fredericksburg or Potomac Railroad Company, shall be drawn or propelled by steam upon that part of their railroad or railway track on Broad street, east of Belvidere street, in said city."

Under this ordinance, the city or the company might have proceeded more nearly according to "the law of the land"—more nearly "by due process of law"—than could be done after the 8th of September, 1873. Then this third section was re-ordained, (p. 27), with the following addition:

"The penalty for failing to comply with this section shall be a fine of not less than one hundred nor more than five hundred dollars for each and every offence, to be recovered before the police justice of the city of Richmond."

That party to the controversy which thus ordained what "it ought not to have done" caused its ordinance to be enforced by officers compensated by that same party, for their official services. Under this ordinance, and under color of section 20 of the city charter* the police justice, appointed under the act of July 11, 1870,† issued the summons (p. 186), and after its service by the sergeant of police, adjudged the ordinance

* "Where, by the provisions of this act, the City Council have authority to pass ordinances on any subject, they may prescribe any penalty not exceeding five hundred dollars (except where a penalty is herein otherwise provided for) for a violation thereof, and may provide that the offender, on failing to pay the penalty incurred, shall be imprisoned in the jail of said city for any term not exceeding three calendar months, which penalties may be prosecuted and recovered with costs in the name of the city of Richmond; and the City Council may subject the parent or guardian of any minor or the master or mistress of any apprentice to any such penalty for any such offence committed by such minor or apprentice." (Sess. Acts., 1869–70, p. 127, s. 28.)

† After directing that the police justice shall hold a court daily, this act provides that "the jurisdiction of the court shall extend to all cases arising within the jurisdictional limits of the city of which a justice of the peace may take cognizance under the laws of the State," (Code of 1849, chap. 150, p. 595, *et seq.*), "and to all cases arising under the charter or ordinances of the city, or where there is a claim against the city or a person therein, *if it does not exceed one hundred dollars, exclusive of interest.*" (Sess. Acts., 1869–70, p. 456, chap. 297, sec. 106).

valid, and that the company shall pay a fine of $500. (p. 186.) To obtain a decision from any other tribunal than a police justice as to the validity of the ordinance, and as to the fine of $500, it was necessary to give an appeal bond. (p. 186.)

In South Carolina, in 1794, in the case mentioned *ante p.* 2, *Burke J.* said:

"I think it necessary to inquire: 1st. If the corporation possesses the *legislative* power they have exercised—that of *enacting laws* and creating penalties to £100 or any greater amount that they may choose? 2dly. If they have a *judiciary* power for *recovering* these fines? 3dly. If they have also the *executive* power of *levying* them? 1st. It is to be observed that the power which they have set up hath no bounds or frontier that they shew to us. It is sovereign and unlimited, by their claiming authority (under the precedent of laying £100) to inflict as far as £500, of consequence to £1,000, or any greater sum, as they may think proper. This is a pretension so extravagant that it seems to me to be paying a very sorry compliment to law and common sense to dwell upon arguments to the contrary. The claiming of such authority, by a body, too, of very inferior jurisdiction, not equal, perhaps, to our county courts, and publicly supporting this claim as they do, shews clearly that our laws and the decisions of our courts are in a state of uncertainty that men of sense and reflection very little think of. Upon the slender basis of the confined authority, which the corporation really possesses, to erect such a high superstructure and insist publicly on their right to do so, proves another thing—it serves to illustrate, upon a small scale, the intruding, usurping nature of power: and with how much greater than the energy of a wedge, it is eternally at work, to force open for itself more elbow room and free-license, than foresight itself or reason ever intended." *Zylstra v. Corpo. of Charleston*, 1 Bay, 387. *Waties J.* said: "Any one who will consider at all must see in it a most inordinate combination of the legislative, the executive, and judicial powers. Heretofore it has been thought essential to civil liberty to keep these powers widely asunder; the separation of them was supposed to characterize a free government and the union of them a despotic one. But by virtue of the charter, the city council makes by-laws; they appoint, as is frequently the case, some of their own members the commissioners to carry them into effect: and the same members afterwards may take their seats as judges, to determine on any breaches of them which may have been committed." (S. C. 1, Bay 396.)*

*The judges, in South Carolina, holding that by and under the ordinance of the City Council, there was exercised an unwarrantable jurisdiction, that ordinance was afterwards repealed.

If such consideration as was given to the subject in South Carolina in 1794 had been given to it in Virginia in 1874 and 1875, it might have been held there that the ordinance of September 8, 1873, and the judgment of the police justice were not pursuant to "an authority exercised under" the State, especially as the Legislature of the State thought the exclusion of the company's engines from the city should or might be regarded as in conflict with the contract made with the company. But the judgment of the police justice was affirmed by the Circuit Court (p. 8); and although it was insisted before the highest court of the State that the ordinance was invalid, and the judgment of the circuit court repugnant to the fourteenth amendment of the Constitution of the United States (p. 7); yet the judgment of the circuit court has been affirmed by the highest court of the State. Now, under the fourteenth amendment—which adopts language that had before received a judicial construction—the question is, whether the ordinance of September 8, 1873, and the judgment of the police justice are "the law of the land," or "due process of law?" whether the law of the State which (as construed by its highest court) authorizes such an ordinance and judgment, does not abridge the privileges or immunities of citizens, deny to the plaintiffs in error the equal protection of the laws, and deprive them of property without due process of law?

Magna Charta, ch. 29, (2 Inst., p. 45 *et seq.*,) is often looked to in the United States for light as to fundamental principles. (2 Kent's Com., 13; 3 Story on Const., 661, §§ 1783, 1784.) As Magna Charta forbid, so our bills of rights and constitutions forbid, "the enactment of a partial law by which the rights of any individual shall be abridged or taken away." *Jones* vs. *Perry*, 10 Yerg., 71, 72. That legislators, whether in the general

assembly of a State or in a city council, may not by law or ordinance "have left undone those things which" they "ought to have done," and may not "have done those things which" they "ought not to have done," is the high aim of the supreme law.

In the Supreme Court of New York, in 1811, KENT, C. J., said:

"*The power that makes is not the power to construe a law.* It is a well settled axiom that the union of these two powers is tyranny. Theorists and practical statesmen concur in this opinion. Our Government, like all the other free governments upon this continent, and like the only free government at present remaining in Europe, consists of departments, and contains a marked separation of the legislative and judicial powers. The constitutions of several of the States, and, among others, those of Massachusetts and Virginia, have an express provision that the legislative and judicial powers shall be preserved separate and distinct, so that one department shall not exercise the functions belonging to the other. Most of the models of a free and limited constitution which were produced in Europe under the impulse of the late revolution, and which had any pretensions to skill or wisdom, and particularly the new constitutions of Poland and France in 1791, and of France in 1795, contained the same provision, in language more or less explicit." *Dash* vs. *Van Kleeck*, 7 Johns., 508, 509.

A body clothed with legislative power may pass a *general* law or ordinance as to what is within its jurisdiction; but the cases cited in the opinion of the court below, p. 199, do *not* authorize such a law or ordinance as that now in question—an ordinance specially against one single party—prohibiting that party from using property as it has been used for about forty years; and prescribing a heavy penalty for failing to comply with this prohibition.

The earliest of the cases cited in the opinion of the court below, p. 199, is that of *Coates* v. *Mayor, &c. of New York*, 7 Cow., 585, as to Trinity Church yard. The Legislature of the State having passed a law giving power to the common council to pass ordinances "for regulating, or, if they shall find it necessary, *preventing the in-*

terring of the dead within the said city," the common council did *not* ordain that no person should dig or open a grave in the churchyard of Trinity Church on Broadway; but it *did* pass an ordinance applicable, at its date, (October 7, 1823,) to the whole of the then populous part of the city, ordaining "that no person shall dig or open any grave, &c., in any burying ground, cemetery, or churchyard, or in any other part or place in this city, which lies to the southward of a line commencing at the centre of Canal street on the North river, and running through the centre of Canal street, &c., to the East river."

On the same principle is another of the cases cited by the court below, (p. 199:) *Vanderbilt* vs. *Adams*, 7 Cow., 349. It was under an act of New York authorizing harbor masters to regulate and station "all ships and vessels in the stream of the East and North rivers within the limits of the city of New York and the wharves thereof."

So it may be as to the sale of infoxicating liquors. And so it may be as to the use of steam by a railroad company when the power to modify and alter its charter is reserved, as it was in the case of *The Buffalo and Niagara Falls R. R. Co.* vs. *City of Buffalo*, 5 Hill, 209, mentioned ante p. 3. *There* the city of Buffalo did *not* pass an ordinance specially against the Buffalo and Niagara Falls Railroad Company. It *did* ordain in general terms, "that it shall not be lawful for any person or persons, by means of any steam power, to move, propel, or drive, or cause to be moved, propelled, or driven, any railroad car or locomotive within the bounds of this city further south than the intersection of Court street with the Terrace."

In all these cases there has been regard to what has been established as fundamental and paramount law.

"The government is divided into co-ordinate departments. The legislature constitutes one of those departments and is as much restrained and bound to move in its prescribed sphere as either the executive or judicial." *Jones* vs. *Perry*, 10 Yerger, 73-'4. "Any assumption by the legislature of powers conferred by the constitution upon the judiciary, is as destitute of authority as it would be in the courts, were they, instead of adjudging what the law is, to undertake the exercise of legislative power, and to prescribe what it shall be." Id. 74-'5.

The cases of *Bank* vs. *Cooper*, 2 Yerg., 599, *Walley's heirs* vs. *Kennedy*, Id. 554, *Tate* vs. *Bell*, 4 Id. 202, and *Officer* vs. *Young*, 5 Id. 220, "were all decided upon the same general principle, that the several laws upon which they arose, were partial in their operation, acting only on special cases, and tending to deprive the parties to be affected by them, of their rights and property." 10 Yerg., 78. The ordinance, now in question, is not less special, than the law in question in Tennessee, in 1836, * of which the Supreme Court of that State said: "It is equally special, equally restricted in its operation, and tends more directly to deprive the parties to be affected by it, of their property than either of the acts above referred to. It is not therefore the law of the land, and is void." Ibid. (10 Yerg., 78.)

But a little while before the Supreme Court of North Carolina said:

"What more can the citizen suffer than to be 'taken, imprisoned, disseized of his freehold, liberties, and privileges; be outlawed, exiled, and destroyed; and be deprived of his property, his liberty, and his life, without crime? Yet all this he may suffer if an act of assembly simply denouncing those penalties *on particular persons, or a particular class of persons*, be in itself a law of the land within the sense of the Constitution." (*Hoke* vs. *Henderson*, 4 Dev., 15. "Such legislative acts as profess in themselves directly to punish persons, or to deprive the citizen of his property, without trial before the judicial tribunals, and *a decision upon the matter of right as determined by the laws under which it*

* The Supreme Court of Tennessee said: "It is difficult to perceive how an act which determines that the property of a party is liable for a given debt, and that it be sold for the payment of that debt, is not a judicial act, and yet, in substance, that is the case before us." 10 Yerg., 70.

vested, according to the course, mode, and usages of the common law, as derived from our forefathers, are not effectually 'laws of the land' for those purposes." (S. C. 16.)

The police power of a State or city, whether exercised to prevent interments of the dead in a populous part of the city, or to have vessels stationed within a harbor, or to prevent the sale of intoxicating liquors, or to exclude locomotive engines, should never be exercised by or under a law or ordinance whereby a particular person, firm, or company is sought out as the object of the police power, and denied the equal protection of the laws.

In New York, BRONSON, J., in referring to the constitution of that State, Art. 7, § 1, says:

"The words by the 'law of the land,' as here used, *do not mean a statute passed for the purpose of working the wrong*. That construction would render the restriction absolutely nugatory, and turn this part of the Constitution into mere nonsense. The people would be made to say to the two Houses, 'you shall be vested with the legislative power of the State, but no one shall be disfranchised or deprived of any of the rights or privileges of a citizen, unless you pass a statute for that purpose;' in other words, 'you shall not do the wrong unless you choose to do it.'" *Taylor* vs. *Porter*, 4 Hill, 145.

Observing that Lord COKE, in his commentary upon *Magna Charta*, says that the words 'by the law of the land' mean by the due course and process of law, BRONSON, J., proceeds to the seventh section of the same article: "No person shall be deprived of life, liberty, or property, *without due process of law*." He says:

"The words, 'due process of law,' in this place cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt or determining the title to property. It will be seen that the same measure of protection against legislative encroachment is extended to life, liberty and property; and if the latter can be taken without a forensic trial and judgment, there is no security for the others. If the legislature can take the property of A and transfer it to B, they can take A himself and either shut him up in prison or put him to death. But none of these wrongs can be done by mere legislation. There must be 'due process of law.'" (S. C., 4 Hill, 146, 147.)

In the same year (1843) the Supreme Court of Pennsylvania, speaking of the constitutional provision—"that no citizen shall be deprived of his life, liberty, or property unless by the judgment of his peers or the law of the land"—said:

"What law? Undoubtedly, a pre-existent rule of conduct declarative of a penalty for a prohibited act. The design of the convention was to exclude arbitrary power from every branch of the government. The right of *property* has no foundation or security but the law; and when the legislature shall successfully attempt to overturn it, even in a single instance, the liberty of the citizen will be no more." *Norman vs. Heist*, 5 W. & S., 173.

In a case before the Court of Appeals of South Carolina, in 1850, there was such "pre-existent rule of conduct." An ordinance passed in 1836, imposed a penalty *upon any individual or body corporate* that might "open any new burying ground in the city;" "*the defendant, a congregation formed since* 1836, *has since that time opened a new burying ground*" in the city. The court said: "*If the ordinance were directed against the Wentworth Street Baptist Church*," (the defendant,) "*the complaint might be just that it created a personal disability and enacted individual penalties;* but all other persons are equally prohibited, and would equally be amenable for a violation of the ordinance if they should do what it forbids." *City Council vs. Wentworth Street Baptist Church*, 4 Strob. 306.

The decision of Mr. Justice CURTIS and his associate, in 1852, in the Circuit Court of the United States for Rhode Island, in *Greene vs. Briggs, &c.*, 1 Curtis, 325, is pertinent to the present case, where there was required "security for the payment of the penalty and costs as a condition for having a trial" by or before any other person than the police justice. That decision is recognized in New York, in 1856, in *Wynehamer vs. The People*, 13 N. Y., 443.

In this State (New York) after the cases of *Bean vs.*

City of Utica, 2 Barbour, 110, and *Clark vs. Mayor, &c., of Syracuse*, 13 Id., 34, 35, (cited on page 57 of Mr. Daniel's brief,) and after *Westervelt vs. Gregg*, (2 Kernan, 212,) to wit: in 1856, in the Court of Appeals, *Comstock J.* said:

"To say, as has been suggested, that 'the law of the land' or 'due process of law' may mean the very act of legislation which deprives the citizen of his rights, privileges, or property, leads to a simple absurdity. The Constitution would then mean that no person shall be deprived of his property or rights unless the legislature shall pass a law to effectuate the wrong; and this would be throwing the restraint entirely away. The true interpretation of these constitutional phrases is, that where rights are acquired by the citizen under the existing law, there is no power in any branch of the Government to take them away: but when they are held contrary to the existing law, or are forfeited by its violation, then they may be taken from him—not by an act of the legislature, but in the due administration of the law itself before the judicial tribunals of the State. The cause or occasion for depriving the citizen of his supposed rights must be found in the law as it is, or at least it cannot be *created* by a legislative act which aims at their destruction. Where rights of property are admitted to exist, the legislature cannot say they shall exist no longer: nor will it make any difference, although a process and a tribunal are appointed to execute the sentence." *Wynehamer* vs. *The People*, 13 N. Y., 392, 393.

"It is plain, therefore, both upon principle and authority, that these constitutional safeguards, in all cases, require a judicial investigation, not to be governed by a law specially enacted to take away and destroy existing rights, but confined to the question whether, under the pre-existing rule of conduct, the right in controversy has been lawfully acquired, and is lawfully possessed." *S. C.* 13 *N. Y.*, 395.

"To provide for a trial to ascertain whether a man is in the enjoyment of either of these rights," (life, liberty, or property,) "and then, as a consequence of finding that he is in the enjoyment of it, to deprive him of it, is doing indirectly just what is forbidden to be done directly, and reduces the constitutional provision to a nullity." "A law which should make it a crime for men either to live in or rent or sell their houses, would fall within the same prohibition upon legislative authority." *S. C.* 13 *N. Y.* 420.

These authorities rule the present case. The railroad company was, and for about forty years had been, in the enjoyment of the right to have a car, engine, carriage,

or other vehicle of any kind belonging to or used by the railroad company, drawn or propelled by steam, upon its railroad in the city. Yet 'without due process of law,' to have it determined whether the company has or has not the right to continue in such enjoyment, the city council prohibits such enjoyment, and thus deprives the company of its property! The *legislature* of the State had made it a punishable offence if any person should wilfully *impair* or destroy "machines, wagons, vehicles, or carriages belonging to the company." (§ 36, p. 23 of Pr. R.) The *city council* makes it a punishable offence for the railroad company to *use* its own machines or vehicles on its own railroad! (Pr. R., p. 7; citing 47 Maine, 208.)

It was observed in North Carolina in 1833, by RUFFIN, C. J., that one "cannot rightfully be deprived unless the thing he claims was never property, or has ceased to be so, or unless he has parted from the property he had in it by forfeiture or otherwise." *Hoke* vs. *Henderson*, 4 Dev., 13.

"The Legislature may enjoin, permit, forbid and punish; they may declare new crimes; and establish rules of conduct for all its citizens in future cases; they may command what is right and prohibit what is wrong; but they cannot change innocence into guilt; or punish innocence as a crime; or violate the right of an *antecedent lawful contract*; or the right of *private property*." *Chase* J., in 1798, in *Calder & Wife* vs. *Bull & Wife*, 3 Dall, 388; *Marshall*, C. J., in 1810 in *Fletcher* vs. *Peck*, 6 Cranch, 134-5; *Terrett and others* vs. *Taylor and others*, 9 Ib., 50-1.

"What is *property*; that is, what do we understand by the term? It means in reference to the thing, whatever a person can possess and enjoy by right: and in reference to the person, he who has that right to the exclusion of others, is said to have the property." *Hoke* vs. *Henderson*, 4 Dev., 13.

A Legislature of one State may act as if there was no right of property in intoxicating liquors, and a city coun-

cil in another State may act as if there is none in machines propelled by steam; but such positions cannot be maintained.

In New York, in 1856, when the Court of Appeals was to determine as to the validity of the "act for the prevention of intemperance, pauperism, and crime," COMSTOCK, J., said.

"It is, then, I believe, universally admitted that when this law was passed, intoxicating liquors, to be used as a beverage, were *property*, in the most absolute and unqualified sense of the term; and, as such, as much entitled to the protection of the Constitution as lands, houses, or chattels of any description." *Wynehamer* vs. *The People*, 13 N. Y., 383, 384. "Property, if protected by the Constitution from such legislation as that we are now considering, is protected because *it is property innocently acquired under existing laws*, and not upon any theory which even so much as opens the question of its utility." S. C., 385, 386. "In a government like ours, theories of public good or public necessity may be so plausible, or even so truthful, as to command popular majorities: but, whether truthful or plausible merely, and by whatever numbers assented to, there are some absolute private rights beyond their reach, and among these the Constitution places the right of property." S. C., 387.

When the ordinance now in question was passed locomotive engines of the railroad company were *property* in the most absolute and unqualified sense of the term; and, as such, entitled to the protection of the Constitution. The company had "become vested of a *property right* which cannot be destroyed" by the proceedings now in question. *Beason* vs. *Mayor, &c. of N. Y.*, 10 Barbour, 244. "*Property* is the right of any person to possess, use, enjoy, and dispose of a thing." "A man may be deprived of his property in a chattel, therefore, without its being seized or physically destroyed, or taken from his possession." SELDEN, J., in *Wynehamer* vs. *The People*, 13 N. Y., 433.

Judicial decisions made before the adoption of the 14th amendment, establish the meaning of the words

prohibiting the deprivation of property without due process of law. *Bloodgood vs. M. & H. R. R. Co.*, 18 Wend., 17; case of *John & Cherry Streets*, 19 Ibid., 676. The constitutional provision is not limited to cases where there is to be manual interference with the rights of person and property; else vested rights to franchises might be at the mercy of the legislature. *Wineharner vs. The People*, 13 N. Y., 434. By the ordinance in question there has been, as was said in New Jersey, in 1861, "an unwarrantable interference with franchises granted by the legislature." *State vs. Jersey City*, 5 Dutcher, 165; cited in Pr. R., p. 6.

If the sovereign power of the State shall desire for public use to take or impair any of the franchises of the railroad company, it may be done under the right of eminent domain, but under that alone. This court, in 1846, said:

"A *franchise is property*, and nothing more: it is incorporeal property, and is so defined by Justice Blackstone, in treating, in his second volume, chap. 3, p. 20, of the rights of things. It is its character of property only which imparts to it value, and alone authorizes in individuals a right of action for invasions or disturbances of its enjoyment. *Vide* Bl. Com., vol. 3, ch. 16, p. 236, as to injuries to this description of private property, and the remedies given for redressing them. A franchise, therefore, to erect a bridge, to construct a road, to keep a ferry, and to collect tolls upon them, granted by the authority of the State, we regard as occupying the same position with respect to the paramount power and duty of the State to promote and protect the public good, as does the right of the citizen to the possession and enjoyment of his land under his patent or contract with the State, and it can no more interpose any obstruction in the way of their just exertion." (*West River Bridge vs. Dix, &c.*, 6 How., 534, also 537 and 541, *et seq.*)

This decision is recognized in a case in Vermont, which is cited in the opinion of the court below (p. 195), as to police power. In the case so cited the court uses this language:

"It is admitted that the essential franchise of a private corporation is recognized by the best authority as private property, and cannot be taken

without compensation even for public use." *Thorpe* vs. *R. & B. R. R. Co.*, 27 Verm., 151.

In Maine, in a case cited before the court below (p. 7 of Pr. R.), it is also recognized as to the charter of a railroad company, that "the privileges granted thereby cannot be changed or impaired" without just compensation. *State* vs. *Noyes*, 47 Maine, pp. 205, 206, 211, 216.

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WITH
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For Plaintiffs in Error.

DECEMBER 10, 1877.

In the Supreme Court of the United States.

(No 150.)

The Richmond, Fredericksburg & Potomac Railroad Company

vs.

The City of Richmond.

Error to Supreme Court of Appeals of Virginia.

BRIEF OF APPELLEE.

In the Supreme Court of the United States.

(No. 150.)

The Richmond, Fredericksburg & Potomac Railroad Company
vs.
The City of Richmond.

Error to Supreme Court of Appeals of Virginia.

BRIEF OF APPELLEE.

The assigned errors of the petition, as more formally presented in the appellant's brief in this case, are three. They may, however, be formulated in one proposition, as follows:

"The ordinance of the city of Richmond, passed September 8, 1873, forbidding the Richmond, Fredericksburg and Potomac Railroad Company, under penalty of a fine, from using steam for the propulsion of their cars upon Broad street, in said city, is unconstitutional, as impairing the obligation of the contract of the Company's act of incorporation, or the obligation of a contract with the city of Richmond, or both; and therefore void."

This is not a controversy, as the plaintiff in error would have it appear, between two corporations, alike the creatures of the Legislature, and with like limitations of power and prerogative. It is a controversy between a private corporation—a common carrier, and the sovereign authority of the State, exercised for the preservation of the life and limb and health of all her people, through a familiar and recognized agent—a city government. First Presbyterian Church vs. The City of N. Y., 5 Cowen, 538; Fisher vs. Harrisburg, 2 Grant., 291; Com'th vs. Robertson, 5 Cushing, 438; Vanderbilt vs. Adams, 7 Cowen, 349; Zylstra vs. Charleston, 1 Bay S. C., 382; Parke B., 19 Law Jour. N. S., 493;

Hopkins vs. The Mayor of Swansea, 4 M. & W., 640; Williams vs. Augusta, 4 Georgia, 509.

This inherent power and duty of the State does not rest upon that *eminent domain*, by virtue of which private property may indeed be taken, but never without compensation; but upon a fundamental and inherent condition of the social compact which, in its public aspect, authorizes and constrains the State to protect the life and property of the citizens by police regulations, and in its private aspect obliges the citizen to exercise his rights, and enjoy his property, with due reference to the safety and rights of others—limitations, one of which is expressed in the maxim, *salus populi suprema est lex*, and the other in the no less important injunction, *sic utere tuo ut alienum non lædas*.

Under this power, the loss suffered by the citizen whose privileges are invaded is not paid for in damages, but finds its compensation in the general good, and in that alone. Commonwealth vs Alger, 7 Cushing, 85.

The learned counsel for the plaintiff in error (Brief, p. 28) vainly endeavor to belittle this large authority by describing it as "*merely* a delegation to the municipal corporation of a portion of the legislative functions of the supreme legislature of the State" No qualifying "merely" can destroy the large implications of this statement, albeit unfriendly, of the source and scope of this high prerogative; and courts have everywhere liberally enforced it, no matter what the value or the antiquity of the right it limited, or even destroyed. Cases above cited, and Stuyvesant vs. The Mayor of N. Y., 7 Cowen, 604; Baker vs. The City of Boston, 12 Pickering, 191

Every natural person, and *a fortiori* every artificial person, holds his property, whatever it be, subject to this restriction, that it must be so used as not to injure others, and that the sovereign authority may, by police regulations, so direct the use of it, that it shall not prove pernicious to his neighbors, or the citizens generally. 1 Dillon on Municipal Corp., § 93.

The failure to exercise the power at a particular time, or under peculiar conditions, raises no presumption or prescription adverse to the existence of the power; and the State, or the municipal corporation, which for this purpose is its agent, may whenever the time arrives or the necessities of the case, in its judgment, demand it, exercise the authority. C. J. Redfield in Thorpe vs. The Rutland and Burlington Railroad Company, 27 Vermont, 140; Green vs. City of Savannah, 6 Ga., 1; Hart vs. Mayor, 9 Wendell, 571.

Under this authority, municipal corporations prohibit the erection of

wooden buildings in special localities. Wadleigh vs. Gilman, 12 Maine; Respublica vs. Duquet, 2 Yeates, 493.

Regulate speed of travel. Com'th vs. Worcester, 3 Pickering, 462; Com'th vs. Stodder, 2 Cushing, 562.

Prohibit animals from going at large. Waco vs. Powell, 32 Texas, 258.

Prohibit cemeteries within special districts. City Council vs. Baptist Church, 4 Strob. (S. C.), 306; Bogart vs. Indianapolis, 13 Ind., 134; Pres. Church vs. Mayor, 5 Cowen, 538

Regulate hoistways in stores. Mayor of New York vs. Williams. 15 N. Y., 502.

Regulate storing of powder. Cheatham vs. Spears, 1 Swan (Tenn.), 213; Williamson vs. City of Augusta, 4 Ga., 509.

And, generally, it is under this power, whether it finds its warrant, as it sometimes does, in specific legislative provision, as in the present charter of the city, or in general terms, as was the case with the charter of the city at the time this railroad was incorporated (quoted in opinion of Supreme Court of Appeals, printed record, p. 193), or in "those powers and privileges which are inherent in every municipal corporation to guard the safety and promote the comfort and welfare of the corporation," that municipalities are empowered to pass all laws, not positively or impliedly forbidden, which, in their judgment, are necessary to prevent the acts of individuals from seriously imperilling the public health, safety or welfare. Under this power, whatever its source in the particular case, it is, that cities may prohibit, and have prohibited, the propulsion of cars by steam through their streets, or certain of them. 2 Redfield on Railways, chap. 37, § 2. 2 Dillon on Municipal Corporations, § 565, B & N. R. R. Co. vs. City of Buffalo, 5th Hill, 209; City of New York vs. Miles, 11 Peters, 139.

But it is contended that, however this may be as a general proposition of law, and I do not understand that to be controverted, the principle is without application here, because—

1. The charter of the Company which is a contract (as I admit) guarantees to the Company the privilege to use steam on the street in question; and

2. That the city has forfeited any right it might have to prohibit the use of steam by this Company on its streets, either by a contract, express or implied, or by long acquiescence.

Passing by the inquiry whether the Legislature could so far abrogate

its office as to surrender its power to regulate this company in that particular, even by an express contract, I submit that the charter of this company affords not the slightest warrant for the assumption that there is therein any such contract, express or implied.

Let it be remembered that private corporations take nothing by intendment, save such powers as are *necessary* to the enjoyment of the powers granted. R., F. & P. R. R. Co. vs. Louisa R. R., 13 Howard, 71, and that a privilege exempting a company from a liability to which individuals generally are subject, must be *expressed* in the charter. Providence Bank vs. Billings, 4 Peters, 514, and I submit that it is impossible to find warrant for the pretensions of the company, that this exemption exists in its charter. The plaintiff in error professes to base this claim on two sections alone of their charter—the first, § 1, which defines the route of this road as "from some point within the corporation of Richmond, to be approved by the Common Council;" and the second, § 24, which reads as follows:

"The said President and Directors, or a majority of them, shall have power to purchase, with the funds of the said Company, and place on the railroad constructed by them under this Act, all machines, vehicles, wagons, carriages and teams of any description whatever, which they may deem necessary or proper for the purposes of transportation."

It will not be claimed that there is a specific privilege here accorded to use steam on Broad street in the city of Richmond; for, as a matter of fact, steam is not mentioned in the Act. Nor will it be claimed that there is a specific guarantee in these sections against the claim, by State or city, of its general police powers, under which, as I have shown, the use of steam on the streets of a populous city may be prohibited. Nor can it be shown that the use of steam on that street is a necessary franchise to this Company; for, as a matter of fact, the Company still exists and flourishes, notwithstanding, as appears by the record, it has been prohibited since January 7th, 1874—nearly four years—from using steam on the portion of the street in question.

The claim is, that there is an implied contract in these sections guaranteeing forever the use by the Company, if it pleases, of this particular motor in this street. The syllogism is this:

1. Whatever privilege or franchise the Richmond, Fredericksburg and Potomac Company is entitled to as to its track generally, it is entitled to as to every part of its track.

2. As to its track generally, it is entitled to use steam as a motor.

3. Therefore, as to every part of its track, it is entitled to use steam as a motor.

Now if this be true as to the use of steam, it must, unless express exception be made, be true of every other franchise.

If the cars may be propelled at forty miles an hour on any other part of the route, they may be propelled at that speed through the handsomest and most populous street in Richmond, on an unfenced track.

Again, by section 7 of charter (record, p. 15) the company is authorized to lay down "as many sets of track as they [the President and Directors], or a majority of them, may deem necessary." And if they may do this elsewhere, why not, if they please, on Broad street, if the charter is an "irrevocable vested right and franchise," which must prevail over "revocable political (police?) power." Brief, p. 29.

Again, the same section authorizes the Company at will to make lateral or branch roads, "in any direction whatsoever in connection with said railroad, not exceeding ten miles each in length."

Section 12 (record, p. 17) authorizes "the President and Directors, their officers, agents and servants, to enter upon all lands and tenements through which they may desire to conduct their railroad, and to lay out the same according to their pleasure." Moreover, they are authorized, at their pleasure, to erect workshops and stations, to enter upon adjacent property, and quarry stone, or dig gravel, or take necessary wood. Now, will it be seriously contended that these are privileges which appertain alike to the conduct of the railroad in the open country and in the populous city? And let it be remembered that these are all *express franchises*, not like the use of steam, an implied one. And if these are not conferred on the Company by the charter, why not? Why is it that, if the argument by which the Company pleads immunity for the dangerous nuisance of the use of steam in the crowded street, on the ground of its general right to use steam, is sound, it may not, if it pleases, run its track on the sidewalk of Broad street, instead of the centre of the street, or fill the roadway of that street with sidings and turnouts, or construct a line of workshops down its centre, or establish a stationary engine at some convenient point, or fill its track with pitfalls for cattle? Why may not the Company, as it appears from the evidence in the record they once did, permit their trains to remain made up on the street for hours at a time, and discharge freight in the open street at their pleasure? All these things the Company may do without stint on every mile of their track outside of corporate limits, why should

the use of steam stand on other and higher grounds than these necessary and "irrevocable," and, for the most part, expressly conceded franchises? Is there nothing in the widely different physical conditions of a densely peopled city and a sparsely settled country to impose a different standard of what is lawful and proper in these different situations, albeit the charter itself makes no distinction? Or is it to the good pleasure of the Company, and to that alone, that the 75,000 people of Richmond are indebted for the temporary waiver of those several "irrevocable vested franchises," whose exercise, when it shall be the good pleasure of the Company to claim them, will make Broad street a wilderness. Is it, for example, to the merciful forbearance of this benevolent Company, and to that alone, that we owe the circumstance that a locomotive with a train of cars does not, from 10 to 20 times a day, race at 40 miles an hour through the most thronged thoroughfare of Richmond?

If the position of the plaintiffs is sound, these consequences must follow; and legislatures and courts, no less than city councils, are alike powerless to prevent or punish. Not only may the company indulge itself in such freaks, but as such conduct would be lawful, no damage to life or limb or property, consequent on such management could be recovered.

Some color is thought to be given to this claim of an irrevocable contract by the legislative proviso which accompanies the chartered privilege to the city to exclude steam, and which reads, "provided no contract will be thereby violated." To convert this into a legislative affirmance that a contract would thereby be violated in this case, is so palpably at war with the plain text of the law that it can scarcely need examination. The furthest limit of fair inference is that the legislature recognized that there was a claim by the company; that the assembly or the City Council had entered into some agreement with the company in the premises; and that the question being a judicial, not a legislative one, the assembly remitted it to the courts, declining to make a decision which would have been simply void. So far from that concluding the question, it only states the question, which is here for authoritative conclusion.

But, in the second place, the plaintiffs hold that *quoad* the corporation of Richmond, they are entitled to the use of steam on Broad street, because the city contracted to suffer that use, expressly or impliedly.

As to an express contract, it is not necessary to say more than to ask for its production. It does not exist, and has never existed. It is, however, contended that it may fairly be implied—

1. From the designation of a point within the city, which was to be the *intramural* terminus of the road.

It can hardly need argument to show that such designation is quite *dehors* the question whether steam should be used on that part of the track for transportation *at that time*, still more as to whether it should be used for *all time*. Even "though a legislature should, by express contract, in the shape of a charter, authorize the establishment of a powder mill at a particular point remote from inhabitants, if in process of time dwellings approach the locality so as to make the further prosecution of the manufacture at that point dangerous, the legislature may require the business to be suspended or removed or made safe "*at the sole expense of the corporation.*" C. J. Redfield in Thorp vs. The Rutland and Burlington R. R. Co., 27 Vermont, 140.

If the designation of the terminus, or rather the approval of the terminus chosen by the company, guarantees by the city to the railroad the undisturbed exercise of this particular franchise on the ground that it is, in the charter, granted generally and without excepting the city, then it equally guarantees every other franchise: which will scarcely be contended.

The consent to the terminus only concedes two things—one, that the depot of the company may be made there, the other that the track may be laid and used to that depot; but everything else, subject, to municipal legislation under its police power is necessarily reserved. It may regulate speed, require the ringing of bells at crossings, prohibit the protracted blocking up of the streets by trains, and exclude steam or any special motor; certainly if such motive power is not indispensable to the operations of the company within the city limits.

The city authorities themselves, as I shall presently show, have never ceased to protest against this construction of their act, and are certainly as apt to know, and to have known, their purpose as the company is.

2. In the second place, the plaintiffs contend that the action of the Council in 1836, in accepting from the company one-third of the expense of paving Broad Street, amounted to a guaranty of the use of steam power. There is not a syllable in the Record to justify such a conclusion. The grievance of which the citizens complained at that

time was chiefly that the grade of the road, which in some places was many feet above the level of the turnpike, (that H, or Broad Street, then was), amounted to a barrier impassable for vehicles, (Record, p. 41,) and this was remedied by grading and paving a portion of the street—the portion then built upon.

How a proposal to share the cost of paving a part of a street, the entire length of which the company had invaded with an embankment, in which proposal, and in the Council's action thereon, the use of steam is not even referred to, can be construed into a surrender by the Council of any claim to exclude steam transportation from the street, it is not easy to comprehend.

3. But in the last place, the plaintiffs contend that it is too late—after an acquiescence of forty-one years, for the city to assert this waived claim.

Aside from the well-known fact that no prescription validates a nuisance, and that changed conditions may make that a nuisance which was previously lawful, I submit that there is overwhelming evidence in this record that the city of Richmond has made continual claim of her rights in this behalf.

The earliest business *of any sort* done on the road was in February 1836. Now more than a year before, and within the year in which the company was incorporated, the City Council, (Record, p. 27,) in a resolution approving the selected terminus of the road, incorporated this significant proviso: "Provided that the corporation of Richmond shall not be considered as hereby parting with any power or chartered privilege not necessary to the railroad company for constructing the said railroad, and connecting the same with the depot of said company within the limits of the city."

Thus early did the City Council announce the paramount authority as well of their inherent "powers" as their "chartered privileges."

In 1837, exercising another of their "irrevocable vested rights," the company undertook to allow their trains to stand on Broad street, as they did in the country, which was perfectly logical, it must be conceded. The Mayor brought them to his bar for the violation of a city ordinance, and fined them. Standing on their inviolable contract, they appealed, but on reflection, paid the fine. (Record, p. 29.)

The next year, 1838, certain citizens prayed the Council to prohibit the use of steam by the company on Broad street, and the matter was referred to a special committee, which brought in two reports. Both affirmed the right of the Council to exclude steam from Broad street

at will, and differed alone as to the expediency of its exercise *at that time*.

The Council, therefore, adopted an ordinance prefaced by a series of resolutions, the first of which is in these words:

"1. *Resolved*, therefore, that the Common Council possess, and have never yielded or relinquished the right to prohibit the introduction of steam engines into the city." (Record, p. 46.)

In 1845 another petition was presented to the Council by citizens, praying relief from the nuisance; but the Council did not think the state of the case warranted the exercise of their power of exclusion. Still, that there might be no mistake as to their *claim*, they again prefaced their action by a resolution maintaining the same, as follows:

"*Resolved*, That the Council of the city of Richmond not only maintains the right to prohibit the use of locomotives within this city, whensoever it shall appear expedient to do so, but in contradiction to all allegations to the contrary, they do most positively deny all responsibility to indemnify the Railroad Company for any such exercise of their legitimate powers."

Indeed, the plaintiff's counsel answer their argument from acquiescence, when speaking of the charter of 1869–'70, they say (Brief of Argument, p. 28), "this very question of the right of the Council to exclude from Broad street the engines of the Richmond, Fredericksburg and Potomac Railroad, was, and had been repeatedly during the thirty years preceding, publicly agitated and discussed."

Every conclusion and implication from the acts and utterances of the Council, from the year of the incorporation of the company to the proceedings brought before this court now for review, point unmistakably to the persistence and constancy with which all the successive councils have contended for the privilege of protecting the citizens, when the condition of the population justified it, by legislation which should exclude the dangerous motor, steam, from their most beautiful, and much their most populous thoroughfare.

I will not trouble the court with any marshalling of the evidence as to whether the use of steam on this street is or is not dangerous to person and damaging to the value of property. In the view I take of this matter, the Council is the judge of what is so prejudicial to the life or safety or health of the citizens as to warrant its interference. Baker vs. City of Boston, 12 Pickering, 184; Hovey vs. Mayo, 43 Maine, 322. Inhabitant vs. City of New Orleans, 24 La. An. 452.

They have, in this ordinance, discharged a public duty, which they have never abdicated, and which they could not surrender if so disposed. 1 Dillon, § 61, and cases cited.

But if the court desires evidence tending to show the propriety of the exercise by the council of this power, the deposition of A. Pizzini, Jr., p. 93; Dr. McCaw, p. 97; Henry Miller, p. 107; Julius Sycle, p. 120, will furnish it.

(a) I beg to notice some of the arguments and authorities of counsel for plaintiff in error, not adverted to heretofore. They insist that at the time the act of incorporation was passed, the municipal powers of Richmond, as set forth in the act of 1782, "were exceedingly limited." It is true the numerous details of modern legislation are not to be found there, but the "apt language" for the conferring of police powers will be found. That act prescribes:

§ 2. "They (the corporate authorities of Richmond) * * shall have power to make and establish such by-laws, rules and ordinances, not contrary to the constitution or laws of the Commonwealth, *as shall by them be thought necessary* for the good ordering and government of such persons as shall, from time to time, reside within the limits of the said city or corporation, or shall be concerned in interest therein."

(b) The fact that steam was, or is, used in other cities, only imports that the conditions of such places, in the opinion of those who have the determination of the question, as the condition of Richmond for 30 years, did not or does not call for the exercise of this power, and no more.

(c) I do not contend that the right of the Company to *maintain its track* on Broad street, the city having assented to that route, can be assailed by the city (Brief, p. 12), but that the authority to maintain a track does not involve the privilege to use steam, it being notorious that the road can be, *and is*, operated without steam at that point. The higher rent which a citizen could obtain for the demise of his house as a manufactory of nitro-glycerine, could not be heard to limit the power of a city to prohibit such use. It is not a question of greater or less convenience, or greater or less profit, but ~~of bound~~ power and duty.

(d) Nor do I deny that an act of incorporation of this nature constitutes a *contract*; but when counsel contend that upon the approval of the route through the streets of the city, the company's vested right to enjoy that franchise within the corporation of Richmond from that point was as complete *as it was outside of the corporation*, (brief, p. 13), I submit that the argument proves too much. I have cited above numerous authorities establishing the contrary of this proposition.

(e) The authorities quoted Brief, p. 22, to sustain the position that the

use of locomotive engines on a road is a general incident to the power to operate a railroad, are without application to this question, which is, whether or not a railroad company in a city, as a natural person, holds its property subject to police regulations.

(f) The streets of the city, as the plaintiff in error contends, are the public highways of the State, not the private paths of the citizens; and it is precisely out of that circumstance that the authority and duty of the city to regulate their use grows. The cases cited in which support is found for the right to use steam, are either cases arising without the limits of a city, or cases of private action. The Pennsylvania case cited. Commonwealth vs. P. F. & W., 12 Casey, is without application. There was in that case no reference, direct or indirect, to the source of the claim here—the police power to regulate. The point decided was that the Legislature had authority to permit the building of a road on a public street.

In no State has the municipal right, here appealed to, been more strongly upheld than in Pennsylvania. The Frankfort Railroad vs. City of Philadelphia, 8 P. F. Smith, 119. Trenton Water Power Company, 6 Pa. Law Journal 32, Commissioner vs. Gas Company, 12 Pa. State, 318. Nor do I admit that in case of doubt "the irrevocable vested power must prevail over the revocable political power," brief, p. 29.

The true rule is that in cases of doubt, the construction must be in favor of the municipal corporation who represent the public, 2 B. & Ad., 792, 11 Peters, 545.

(g) The authorities cited, in support of the position, that the State or City cannot impair the franchise of a corporation without compensation, *and also* "without unquestionable proof that the interference of the State or city is necessary for the protection of the lives and property of the citizens from certain and immediate danger" (Brief, p. 30), do not sustain it. Thus Black vs. Philadelphia and Reading Railroad, 58 Penn., 249, was a private action against the railroad, and the court decided that, in such an action, the complainants must show that there is a public nuisance and a private damage likewise. Drake vs. Hudson River Railroad Company, 7 Barb., 508, was also a private action—an application for an injunction to prevent the laying of a track, and the court refused the injunction.

Commissioner vs. Erie & N. E. Railroad, 27th Penn., 339, so far from sustaining, refutes every pretension of the plaintiff in error, holding that "a corporation can take nothing by construction"—"a charter of incorporation must be construed *in favor of the public* and against the grantees," &c.

Mullin vs. Railroad Company, 4 Harris, Pa. 182, decides only that although a freeholder had obtained damages from a turnpike company for her land taken for the highway, she *was not estopped by her receipt in full* from claiming further damages from a railroad company, which, under an Act of Assembly, had purchased the turnpike company's rights.

Bell vs. O. & P. Railroad Company, 1 Casey, 177, was, like the others, a private action to prevent the Company from locating on a special route, because the complainant possessed a number of pasture therein: the evidence showed that the commoners had yielded the common forty years before, and the court decided that, as the common was "extinguished entirely," the prayer to enjoin must be denied.

The court will seek in vain amid the numerous citations of the plaintiffs for a solitary case in which a court of respectable authority has construed the charter of any private corporation to confer by implication any exemption from the common burden of every citizen so to exercise his own rights as not to injure his neighbor; or any exception to the general law which subjects all private rights to the paramount privilege and duty of the State or its agent, to see that the persons and property of the citizen are not improperly jeoparded by the mode of conducting any business, however lawful or profitable or important.

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For the Defendant in Error.